LEGISLATION TO PREEMPT STATE MOTOR CARRIER REGULATIONS PERTAINING TO RATES, ROUTES, AND SERVICES

(103–80)

HEARING

BEFORE THE

SUBCOMMITTEE ON
SURFACE TRANSPORTATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JULY 20, 1994

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[1] Retained in subcommittee file.

MEMORANDUM

TO: Members, Surface Transportation Subcommittee

FROM: Surface Staff

DATE: July 14, 1994

RE: Surface Transportation Subcommittee Hearing on Legislation to Preempt State Motor Carrier Regulations Pertaining to Rates, Routes and Services

The Surface Transportation Subcommittee will hold the referenced hearing on Wednesday, July 20, 1994, at 10:00 a.m. in Room 2167 Rayburn House Office Building. Witnesses scheduled to testify represent a broad spectrum of interests, including Members of Congress, federal and state officials, representatives from the trucking and shipping industries, the Teamsters Union, the bus industry and the messenger/courier industry.

Background

With the passage of the Motor Carrier Act of 1980, Congress ended decades of strict federal regulation of commercial motor carriers. The Interstate Commerce Commission has interpreted the statute very liberally, resulting in interstate motor carrier entry into the market and rates based primarily on the needs of the market.

For trips within state boundaries, forty-two states still maintain some level of motor carrier economic regulation, ranging from liberal to strict. Restrictions on entry, rates, routes, and types of commodities carried are typical areas that remain under state control.

A broad coalition of shippers and motor carriers argue that the remaining state regulations lead to vast inefficiencies in the shipment of goods and reduce the competitiveness of U.S. products in the international marketplace. Numerous examples have been cited where rates for shipments within a state exceed rates for comparable distances across state lines. In the small package express business, companies frequently ship goods across state lines and back into the state of origin to avoid the higher rates for purely in-state shipments. Private carriers object to regulatory schemes which prohibit them from obtaining backhauls or hauling for subsidiary companies, which forces them to run many empty miles.

Legislative proposals before the subcommittee fall into three categories: proposals that reform state regulation for all interstate carriers (H.R. 2860); measures to reform regulations for private carriers (H.R. 1077); and measures to remove "intermodal all-cargo air carriers" (including an indirect cargo air carrier, as defined in Section 296.3 of Title 14, Code of Federal Regulations, as in effect on March 1, 1994) that undertakes to provide the transportation described in Section 105(a)(4) contained in Section 211 of the Senate passed amendment to the House passed Airport and Airway Improvement Act of 1993. Section 211 therefore becomes a Conference issue once Conferees are named.

Many regulated motor carriers (particularly less-than-truckload carriers), unions, and state regulatory officials strongly oppose state regulatory reform. They believe the trucking industry is already suffering from a severely competitive market, growing concentration, and possibly below cost pricing, and are concerned that an end to existing state regulation would only exacerbate current problems. Labor representatives fear that union shops would experience a further loss in market share.

State regulatory officials believe this is an area of purely state concern that is not static but constantly under scrutiny, as demonstrated by major state regulatory reform initiatives that have taken place in recent years.

Attached for your information are Section-by-Section descriptions of H.R. 2860 and H.R. 1077, together with a copy of Section 211 of H.R. 2739, the Aviation Infrastructure Investment Act of 1993 and a description of what it appears to mean.

SUMMARY

SECTION 211
OF THE
AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1993

Section 211 provides for the preemption of intrastate regulation of rates, routes, and services of any "intermodal all-cargo air carrier" transporting property, pieces, parcels, or packages between States or wholly within a single state by aircraft or by motor vehicle, whether or not such property has had or will have a prior or subsequent air movement. An indirect all-cargo air carrier is defined in the regulations as any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier operating under certificate, regulation, permit or order issued by D.O.T. Such individuals are usually "freight forwarders."

It would also deregulate certain motor common carriers and private motor carriers if they fit into the definition set forth in paragraph (B). It is not certain how many carriers fit into this definition.

SEC. 211. INTERMODAL ALL-CARGO AIR CARRIERS.

(a) DEFINITIONS.—Section 101 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301) is amended by redesignating paragraphs (25) through (41) as paragraphs (26) through (42), respectively; and by inserting immediately after paragraph (24) the following new paragraph:

"(25) 'Intermodal all-cargo air carrier' means—

"(A) an air carrier (including an indirect cargo air carrier, as defined in section 296.3 of title 14, Code of Federal Regulations, as in effect

on March 1, 1994) that undertakes to provide the transportation described in section 105(a)(4); or

"(B) any other carrier—

"(i) which has authority to provide transportation;

"(ii) which (I) is affiliated with an air carrier described in subparagraph (A) through common controlling ownership, or (II) utilizes as principal or as shipper's agent, or is affiliated through common controlling ownership with companies that utilize, an air carrier described in subparagraph (A) at least 15,000 times annually; and

"(iii) which undertakes to provide the transportation described in section 105(a)(4).".

(b) PREEMPTION.—Section 105(a) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1305(a)), as amended by this Act, is further amended by adding at the end the following new paragraph:

"(4)(A) Except as provided in subparagraph (B), no State or political subdivision thereof, no interstate agency of two or more States, and no other political agency of two or more States shall enact or

enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any intermodal all-cargo air carrier when such carrier is transporting property, pieces, parcels, or packages between States or wholly within any single State by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

"(B) Subparagraph (A)—

"(i) does not apply to the transportation of household goods as defined in section 10102(11) of title 49, United States Code;

"(ii) shall not restrict safety regulatory authority; and

"(iii) does not apply to the regulation of vehicle size and weight.

For purposes of clause (ii), the authority to regulate rates, routes, or services shall not be construed as safety regulatory authority, and the authority permitted under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) to regulate routing shall not be affected.

"(C) For purposes of this paragraph, a person who is an intermodal all-cargo air carrier in any one State shall be considered such a carrier in all States.

"(D) This paragraph shall not in any way limit the applicability of paragraph (1).".

H.R. 1077
SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE – "PRIVATE MOTOR CARRIER EQUITY ACT"

SECTION 2. COMPENSATED INTERCORPORATE TRANSPORTATION

Under the Interstate Commerce Act, private motor carriers that transport freight for compensation within the corporate family are exempt from regulation by the Interstate Commerce Commission. For the transportation to be exempt, the affected subsidiaries within the corporate family must be owned 100 percent by the parent company.

The current exemption applies only to interstate transportation, however. If the transportation begins and ends in a single state, state regulations apply. At present, 31 states prohibit compensated intercorporate transportation on an unregulated basis. This provision would require states to recognize the exemption for compensated intercorporate transportation that now exists in the Interstate Commerce Act.

SECTION 3. SINGLE SOURCE LEASING OF MOTOR VEHICLES AND DRIVERS TO SHIPPERS

The Interstate Commerce Commission has ruled that a shipper that leases motor vehicles and drivers from a single source (i.e., another motor carrier, a leasing company, or an owner-operator) is operating as an unregulated motor private carrier. Ex Parte No. MC-122 (Sub-No. 2) Lease of Equipment and Drivers to Private Carriers, 132 M.C.C. 756 (1982), aff'd sub nom., Ryder Truck Liens, Inc. v. United States 716 F.2d 1369 (11th Cir. 1983), cert. den. 466 U.S. 927 (1984). The Commission's ruling set out six criteria that must be met by the shipper to establish unregulated private carriage. (The requirement that the lease be for a minimum term of 30 days was later dropped by the Commission in Ex Parte No. MC-122 (Sub-No. 2), Lease of Equipment and Drivers to Private Carriers -- Petitions for Modifications (served October 16, 1986).)

If these leased vehicles and drivers are used in transportation between two points in a single state, however, the transportation is subject to state regulation. At present, 36 states consider transportation pursuant to single source leasing to be for-hire carriage by the lessor rather than private carriage by the lessee. This provision would require states to recognize the single source leasing decision for purposes of state regulation. The provision incorporates into the Interstate Commerce Act the five remaining criteria for single source leasing as set out in the Commission's decision.

SECTION 4. TRIP LEASING OF MOTOR VEHICLES AND DRIVERS FROM PRIVATE CARRIERS

The Interstate Commerce Commission also allows motor private carriers to lease vehicles and drivers to for-hire carriers. The conditions for such leasing are set out in 49 C.F.R. S 1057.22.

Once again, however, intrastate transportation pursuant to this leasing option is restricted. Thirty states presently prohibit trip leasing from private carriers to for-hire carriers. This provision would require states to permit trip leasing under the terms set out in the ICC regulations.

SECTION 5. MOTOR PRIVATE CARRIERS SEEKING OPERATING AUTHORITY

The Interstate Commerce Commission does not limit the ability of a motor private carrier to obtain for-hire operating authority as a common or contract carrier because the private carrier has a non-transportation primary business. Nor does the Commission limit the services provided by such a for-hire carrier.

Some states, however, through statute or regulation have prohibited or limited an applicant with a non-transportation primary business from obtaining and operating with supplemental for-hire authority. This provision prevents a state from prohibiting a private carrier from obtaining intrastate for-hire operating authority solely on the basis that the private carrier has a non-transportation primary business.

SECTION 6. DEDICATED CONTRACT CARRIAGE

This provision establishes a new type of motor contract carrier, a "dedicated contract carrier," which assigns motor vehicles and personnel, including management personnel, for the exclusive use of a particular shipper, and maintains an office at the shipper's facility. This provision treats such carriage on an intrastate basis as private carriage, and prohibits a state from regulating the rates, routes or services of any dedicated contract carrier.

H.R. 2860
SECTION-BY-SECTION ANALYSIS
(starting at page 36)

Section 18 would extend to the states the reforms of both the Motor Carrier Act of 1980 and this bill. It would do so by adding provisions to Section 11501 of title 49, United States Code, requiring any state that wishes to continue to regulate the intrastate operations of federally licensed motor carriers providing transportation of property other than household goods, to do so exclusively in accord with federal standards.

Under section 18(a) (1), the only carriers affected by the new provisions are motor carriers providing transportation of property other than household goods, subject to the jurisdiction of the Interstate Commerce Commission. Pursuant to Section 18(a) (3), the obligation of a State to regulate the described carriers exclusively in accord with federal standards extends to any aspect of State regulation "that is also the subject of regulation by the Commission, including, but not limited to licensing, tariff filing, contracts, rates, classifications, rules, and practices." The scope is intentionally broad and is intended to require States to transfer intrastate operating authority to the extent necessitated by a purchase or other finance transaction approved or exempted by the Commission pursuant to Sections 11343-11344 of title 49, United States Code. This section will also require States to follow Federal standards (i.e. compliance with the requirements of the regulating authority, and with safety and insurance requirements) in granting intrastate authority to federally licensed carriers. Under these standards, State safety requirements may vary from federal requirements only to the extent allowed by 49 U.S.C. 2506-2507 (procedure used to determine what State safety provisions could be applied by States wishing to continue regulating commercial vehicle safety five years after enactment of the Motor Carrier Safety Act of 1984). In addition, states may require levels of insurance coverage in excess of the federal minimums developed by the Secretary of Transportation and applied by the Commission under Section 10927 of title 49, United States Code.

The remaining portions of section 18(a) describe the procedure whereby States may be certified for continued regulations of the specified carriers. This procedure is patterned on that established by the Staggers Act of 1980 for regulation of railroad transportation, but has been modified in response to difficulties experienced in the rail program. Unlike the rail program, the certification procedure described here will require the Commission to inform States at the outset of the standards that will apply. In addition, it will provide longer time frames in which States may prepare their standards and procedures in contemplation of seeking certification.

The specifics of the certification program established here are as follows. Within 120 days after the effective date of this Act, the Commission will be required to establish certification guidelines. The guidelines will provide standards for determining whether the regulatory standards and procedures to be employed by a State accord with those applied by the Commission in regulating motor carriers providing transportation of property other than household goods. Within 180 days following the effective date of the

guidelines, States that wish to continue to regulate will be required to submit to the Commission for approval the standards and procedures they will employ. They will also be required to certify that those standards and procedures are in accordance with the guidelines. Section 18(b) then grants the Commission 180 days in which to grant or deny certification to the requesting states.

Section 18(c) provides that the standards and procedures existing in each state on the effective date of this Act shall remain in effect until the Commission makes an initial certification. Section 18(d) provides that certification will be granted for five year periods. It also provides that States that do not seek or obtain certification will be barred from States regulation of federally licensed motor carriers providing transportation of property other than household goods. In uncertified States transportation by these carriers will be deemed transportation subject to the jurisdiction of the Commission.

Under section 18(e), any federally licensed motor carrier providing transportation of property other than household goods and any other party to a State administrative proceeding in which the lawfulness of that transportation is decided may petition the Commission for review. The Commission will have 60 days in which to act on such petitions by determining whether the standards and procedures applied by the State were in accord with the provision of title 49, subtitle IV. If the determination is adverse to the State, the Commission will be required to "determine and authorize the motor carrier to take the appropriate action with respect to intrastate motor carrier transportation." Under section 18(e), the Commission's authority to grant this relief would also include authority to issue a certificate or permit under sections 10922 or 10923, respectively, of title 49, United States Code enabling the federally licensed carrier to provide intrastate motor carrier transportation of property other than household goods.

Finally section 18(f) would authorize the Commission to prescribe rates in specified circumstances. These circumstances would arise when: a carrier files a proposed change in an intrastate rate or in a classification, rule or practice that effectively changes the rate, the proposed changes will adjust the rate to the same level as a rate charged for similar traffic moving in interstate or foreign commerce, and a State authority fails to act finally on the proposal within 120 days.

LEGISLATION TO PREEMPT STATE MOTOR CARRIER REGULATIONS PERTAINING TO RATES, ROUTES AND SERVICES

WEDNESDAY, JULY 20, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10:07 a.m., in room 2167, Rayburn House Office Building, Hon. Nick Joe Rahall II (chairman of the subcommittee) presiding.

Mr. RAHALL. The subcommittee will come to order, please. The Subcommittee on Surface Transportation is meeting today to conduct a hearing on legislation to preempt State motor carrier regulations pertaining to rates, routes and services.

This hearing was scheduled in response to the Senate amending H.R. 2860, the Aviation Infrastructure Investment Act of 1993, with a provision designated as Section 211. The net effect of this provision would be to preempt the laws of 42 States as they relate to the regulation of rates, routes and services of certain motor carriers engaged in intrastate commerce.

While it is true that Section 211 purports to apply solely to what it terms "intermodal all-cargo air carriers," as a result of the use of convoluted, confusing, yet rather creative legislative drafting, in my opinion, the ultimate effect of this provision would be to exclude just about any motor carrier from State economic regulation depending on how disingenuous or for that matter deceptive the carrier chose to be.

Some may find it passingly strange that a provision of this scope and magnitude was included in an airport improvement bill without the benefit of a public airing of the issue or committee consideration. I know that I did. However we now find ourselves in the precarious position of having to go to conference with the Senate on this matter.

In light of the concerns that have been raised over Section 211, the lack of clarity in its wording, and the pandemonium it is causing among State regulatory authorities, large segments of the Less-Than-Truckload industry and others, I scheduled today's hearing so that we can have a more complete understanding of what is fully at stake here.

I would add that there are two other bills pending before the subcommittee which seek to preempt State motor carrier laws in one fashion or another. The first is H.R. 1077, sponsored by Rep-

resentative Pete Geren, that would preempt State motor laws for private carriers such as corporate fleets. The second bill is H.R. 2960, introduced by Representative Bill Emerson, which would provide for both interstate and intrastate deregulation. In this regard, H.R. 1077 and Section 18 of H.R. 2960 is applicable to the subject matter of today's hearing.

Primary among the issues I intend to investigate during the course of this hearing is whether or not the State regulations in question impede interstate commerce. The Constitution vests with the Congress the power to regulate interstate commerce among the several States. The last time I checked this authority was not extended into matters solely concerning intrastate commerce.

The question also has to be asked: Are 42 States completely in the wrong on this issue? Are their regulations so onerous and outdated that they are frustrating the efficient movement of goods and commodities by the motor carrier industry?

I can certainly understand the competitive concerns that gave rise to this legislation being advanced by companies like UPS and others in the wake of the 1991 Ninth Circuit Court of Appeals decision in *Federal Express* v. *California Public Utilities Commission,* a ruling which found that FedEx was essentially an air carrier and, as such, immune to State motor carrier regulations.

At the same time, equal consideration must be given to the concerns of the independent smaller and often family-run trucking companies who fear that the consequences of this legislation would be their demise. And we must be sensitive to the concerns of the men and women employed by the motor carrier industry who certainly suffered during the deregulatory atmosphere of 1980s.

During our deliberations on this proposed legislation, the test that I will apply is not whether it is in the corporate interest of a few, but whether it is in the overall public interest of consumers, shippers, motor carriers, and their employees alike.

When all is said and done, the House conferees on the airport improvement bill will have only a few options.

We can oppose the inclusion of Section 211 outright or anything like it, or we can simply accept it. We also have the option of modifying it. I didn't hear any boos or cheers on any of those options. We also have the option of modifying it so that it affects only the intermodal small package express industry segment which was the subject of recent deregulatory actions by California, Texas, and Kentucky and the Ninth Court decision.

Finally, we do have the option of discarding the pretense of "intermodal all-cargo air carriers" and substituting the Senate provision with clear and concise language that would ensure that all motor carriers are treated the same, regardless of whether they are affiliated with an air component.

And we may find another option before today is over. I also think it is important that if we move forward with legislation relating to rates, routes and services, we make sure that no violence is done to State regulations relating to motor carrier fitness requirements, safety insurance and the like, and the segments of the industry that have traditionally been treated in distinct fashion, such as household goods carriers.

We have a full day before us. I look forward to the witnesses who have come far in many cases.

But before we do that, I will recognize the ranking Minority Member, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman. The hearing today will focus on Section 211 of the Federal Aviation Administration Authorization Act as passed by the Senate. This section would prohibit State regulations of rates, routes and services for certain motor carriers.

One of the issues we must examine today is the question of who is covered under this provision and who is not covered, and whether we should draw a line somewhere in the industry so that some carriers are deregulated and others are not.

Originally Section 211 attempted to carve out a certain segment of the trucking industry, but we found that in today's marketplace the lines have blurred among the types of services provided by various carriers, and it is impossible to target one segment of the motor carrier industry anymore.

Because the underlying bill is an aviation bill, the language became tortured and twisted as efforts were made to cover an ever increasing number of trucking companies, but still maintain some sort of aviation link, however tenuous.

What we are left with is vague language which could leave many carriers uncertain as to whether or not they are deregulated as a result of this provision and we can find many carriers modifying their operations in ways they might not otherwise in order to qualify for the greater efficiencies available if deregulated under Section 211.

So if we are going to deregulate, we should be certain to do so in an equitable and fair manner so that certain carriers serving similar markets do not have a competitive advantage over others.

Over the past several weeks, I have received stacks of letters from various State public utility commissions predicting dire consequences if their State is no longer able to regulate trucking rates and routes. Well, my own State of Wisconsin deregulated back in 1982, and I am pleased to report that life continues and we are prospering in Wisconsin. Customers, both urban and rural, continue to be well-served. Trucking rates are competitive. Safety has not been compromised.

And while some carriers were negatively impacted and found they couldn't competent, another carrier or a new carrier stepped in to provide the service.

Overall, we have a thriving and competitive trucking industry in Wisconsin. Shippers are satisfied. Truckers are operating more efficiently and no one is calling for reregulation.

Today we will hear some horror stories as to the inefficiencies forced on motor carriers in some of the States that continue to regulate. We will hear the experiences of shippers who are charged more for intrastate shipments than for shipping the same shipment longer distances interstate. That doesn't make sense and in the end it is the consumer who is paying for these burdensome regulations and inefficiencies.

I would like to welcome our many witnesses today who will present a wide variety of perspectives on the interstate trucking

deregulation question. I know the testimony received today will be helpful as we determine the appropriate course to take concerning interstate deregulation, and I particularly would like to welcome our two colleagues, Mr. Emerson and Mr. Hastert who are here with us. Thank you.

Mr. RAHALL. The Chair recognizes the Chairman of our full committee, the gentleman from California, Mr. Mineta.

The CHAIR. Thank you very much, Mr. Rahall, and I want to thank both you and Mr. Petri for holding these hearings, but I also want to publicly thank you and Mr. Rahall and Mr. Petri for your leadership and hard work on getting the NHS bill through committee on to the House Floor and out of the House.

I also want to thank all of those who will be testifying before the subcommittee. I appreciate it because Members really do need to hear from all of you about your perspective. This is a very important issue, so I want to thank all of you for taking time from your own busy schedules to be here to testify and educate us about your views and from your perspectives.

From enactment of the Motor Carrier Act in 1980 until 1992, the ground rules for economic regulation of cargo transportation was relatively straightforward. If you move something by both truck and air, whether interstate or intrastate, it was deregulated. If you moved it by truck in an interstate market, you had to have your rates on file with the ICC, but there was no prior regulatory approval requirement. If you moved it by truck in an intrastate market, you were subject to whatever degree of deregulation or regulation existed in that State.

In other words, the rules you had to play by were determined by what market you were in, not by who you were. An important result was that within each type of market, everybody played by the same rules. In the 1991 Ninth Circuit case regarding FedEx, that approach began to break down. In that case, the courts held that as an air carrier Federal Express was deregulated in intrastate markets even when it moved freight solely by truck.

We began to have markets, specifically some of the intrastate truck markets, where different competitors operated under different rules. This has created some very real problems, particularly where a regulated carrier must try to compete with a deregulated carrier for the same business in the same market. And the Senate has attempted to deal with these problems by adding Section 211 to the airport improvement program legislation.

Section 211 would greatly expand the number of carriers which would be deregulated in the intrastate markets. But there are two key concerns which we need to focus on today. First is that although more carriers would be deregulated under the Section 211 approach, we would still have a situation where some carriers in the intrastate truck markets would be deregulated and others would not. What would that situation mean for those that were not deregulated?

And second, it is not always clear on the face of Section 211 who would be deregulated and who would not. Can we and should we make it clear what rules would apply to the various carriers? And so I look forward to hearing from all the witnesses on these issues,

and I am hoping that they can help us make the decisions we will have to make with regard to this very important issue.

So again, to you, Mr. Chairman and Mr. Petri, thank you very much for holding these hearings and also to all of our witnesses who will be appearing before us.

Thank you very much.

Mr. RAHALL. Thank you, Mr. Chairman. The Chair recognizes the distinguished Ranking Minority Member from Pennsylvania Mr. Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman. I am certainly pleased that we are holding these hearings today. I have a concern about the turn that this issue is taking. We started out by saying we wanted to fix the small package problem and indeed I think there has been broad bipartisan support to do that.

The Senate went beyond that position, however, and has virtually deregulated most, but not all, of the industry. It seems to me that if we were to simply adopt the Senate position, the small LTL carriers in particular would be hurt because they would be the only ones who would continue to be regulated, and it seems to me we have got to find a way to fix this.

It is also notable, I believe, that the administration, I understand, has strongly come out in support of the Senate provision and the ATA, the American Trucking Association, has taken an historic position for the first time saying that they do not oppose the position.

So it appears to me that to mix a metaphor that the train is leaving the station here and I am concerned that we fix the original problem. I strongly support fixing the original problem with the small packages but, at the same time, do it in a way that we do not disadvantage the small LTL carriers. With those comments, I hope that this hearing can shed some light on how we might accomplish that so when we go to conference with the Senate, we will be able to develop a product that is fair to all parties concerned.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Tennessee, Mr. Clement.

Mr. CLEMENT. Thank you, Mr. Chairman. I want to first commend you for calling this hearing on Section 211 of the Aviation Infrastructure Investment Act of 1993.

This provision will provide intermodal all-cargo carriers relief from intrastate rate, route and service regulation. As many of you on the committee know, I have a long track record on this issue. I served six years on the Tennessee Public Service Commission where I learned firsthand how the trucking business operates.

Last Congress I introduced H.R. 3221, the Intermodal Carrier's Competitive Act, which provided the legislative underpinnings for Section 211. Both provisions accomplish the same important goal to allow our small package express industry to compete fair and square both here and in the global marketplace.

H.R. 3221 was introduced in the last Congress and was subject to no less than three days of hearings by the same subcommittee in 1991. Today's hearing represents the fourth hearing on this particular issue, but the first chaired by our distinguished and able Chairman, Mr. Rahall.

H.R. 3221 had 185 cosponsors in the last Congress and the Department of Transportation, as all of you know, supported this legislation. With all that support, one wonders why this issue was not resolved in the last Congress.

Let me give you an example of the problem faced by the small package express industry. Under current Federal law when a company flies a package to its destination, say Memphis to Nashville, Tennessee, its prices and services are regulated only by competition, the marketplace, not by a State or Federal bureaucracy.

However, should that company decide to use surface transportation to pick up or deliver a package within a State, say Memphis to Nashville, the State regulatory agency can claim jurisdiction of the rates, routes and services of that shipment. The State agency can continue to tell that company what to charge, what route it should take, and what type of services it may provide.

Now, apply that to the 41 different States that regulate the small package express industry and you see the nightmare that it has created. These intrastate trucking regulations are both outdated and counterproductive. There is no reason to maintain 41 different regulatory regimes on companies that are trying to provide a similar service at a uniform price for all.

Why should a resident of West Virginia pay more to deliver a package from Charleston to Beckley than a resident from Maryland that sends that same identical package from Baltimore to Rockville? These regulations cost shippers as much as $6 billion a year according to one study.

Intrastate regulations not only hurt shippers, it also hurts the competitiveness of U.S. producers by driving up business costs. In a time when we want our U.S. manufacturers to be competitive in the global marketplace, we allow domestically produced goods to be subject to intrastate regulations.

Just consider this: The number of freight movements that take place on domestically produced goods is seven times more than the single U.S. movement that is typical for an imported product. Obviously our domestically produced goods subject to this type of regulation will cost more than a foreign produced product.

Today we are presented with an excellent opportunity to finally resolve this issue by creating a fair playing field for all truckers which in my view promote economic growth and competitiveness for U.S. companies and jobs for their employees.

As Chairman Rahall says, we have some options available to us. And just like Mr. Shuster said so well, we don't want to do anything to hurt the LTL business as well. And we need to be open-minded, and we need to look at all the facts and information, and then make a prompt decision on this matter.

I think this is the time to make a decision. We have an opportunity, a window here to make those tough choices and be fair to the industry as a whole.

Again, I want to thank you, Mr. Chairman, for having these hearings and moving forward on this important issue.

Mr. RAHALL. The gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman. I just would share the sentiments that have been expressed here today. This is

an issue we need to resolve. And I would say that we need to resolve it promptly.

I am somewhat dismayed that in essence a surface transportation issue is the tail wagging the dog of a major aviation issue which has to do with improvement of our airports throughout this country, and this is a matter that cannot be allowed to continue very long.

We are running the risk of holding up vital construction projects on airports around the country. Section 211 is presently blocking the way to resolution and completion of work on that matter, so I share with all of you the wish that we can resolve this and solve it satisfactorily and move on.

Thank you.

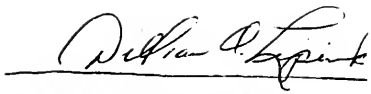
Mr. RAHALL. The gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman. Mr. Chairman, I have a statement that I request unanimous consent to include in the record.

Mr. RAHALL. Without objection, so ordered.

Mr. LIPINSKI. Thank you.

[The prepared statement of Mr. Lipinski follows:]



Statement of Congressman William O. Lipinksi
July 20, 1994
Subcommittee on Surface Transportation

I want to thank the Chairman for holding this hearing today on the issues surrounding further deregulation of the nation's trucking industry.

Although several bills have been introduced to end regulation by the states of certain transportation activities -- Today I am interested in learning more about Section 211 of the Senate-passed, aviation reauthorization bill.

I am convinced that this provision will only lead to less competition and greater unemployment in the industry --- not the other way around.

The witness list today consists of a number of distinguished individuals -- some of whom support further deregulation --- and some who do not.

I am concerned, however, with the large number of small, family-operated companies that may have a great deal to lose if Section 211 becomes law.

Those who support Section 211 argue that it's time for Congress to level the playing field by granting certain companies relief from state regulation.

I would suggest, however, that Section 211 only levels the playing field for some --- while not inviting others to the game.

Section 211 will allow the large carriers --- with their substantial capital --- to operate without state regulatory interference.

Section 211, by disregarding the smaller carriers --- and their employees --- would not create additional competition. It would end competition between the deregulated and the regulated carriers.

Mr. Chairman, in my district, along with UPS and FedEx, I have over 100 companies that may still be subject to the regulatory authority imposed by the State of Illinois.

These small, family-owned and operated companies employ thousands of people. Section 211 will be responsible for putting most — if not all — of these firms out of business.

Obviously, I am going to do everything I can to prevent that from happening.

I look forward to working with Chairman Rahall and Chairman Mineta as we move to conference.

Perhaps, together we can come up with some way to ensure that small trucking companies are not forced to close their doors.

Mr. RAHALL. The gentleman from New Hampshire, Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman. I appreciate your holding today's hearing to review legislation to preempt State motor carrier regulations pertaining to rates, routes and services.

This issue has arisen in the context of the Federal Aviation Administration Authorization Act of 1994, and specifically Section 211 of Senate bill which would deregulate interstate services provided by intermodal carriers. As you know, Mr. Chairman, I strongly support the preemption language included in Section 211 of the Senate bill.

Issues such as price and level of service should not be determined by market—should be determined by marketplace, not by artificial government regulations. Unfortunately these regulations inevitably reappear in the form of higher costs to the consumer.

The 1991 Department of Transportation study estimated, and it has been repeated here, that interstate regulation costs the economy approximately $6 billion per year. By lifting the patchwork of individual State regulations governing their operations, intermodal carriers will be able to respond more quickly to their customers' needs.

This legislation will do much to improve efficiency, competitiveness, and lower transportation costs within the industry. I urge my colleagues on the committee to end this costly regulation and support Section 211.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you.

The gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman. We have a lot of witnesses and a lot of people waiting for a long time, so what I would ask is unanimous consent that my opening statement be included in the record.

Mr. RAHALL. Without objection, so ordered.

[The prepared statement of Mr. Laughlin follows:]

PREPARED STATEMENT OF HON. GREG LAUGHLIN, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Mr. Chairman and members of the committee, I am happy to be here today to speak in support of legislation to preempt intrastate motor carrier regulations.

I support Section 211 of S. 1491, the Federal Administration Aviation Act. However, I would like to see this committee carry the issue further by ensuring that all intermodal carriers enjoy an equal standing in the debate.

Economic regulation of the trucking industry costs the American consumer over $8 Billion per year.

All air cargo intermodal air carriers are currently subject to a confusing patchwork of State regulations.

By removing these artificial economic barriers on the trucking industry, we can help keep consumer cost low and thus ensure the continued success of American companies in this global economy.

Supporting this section can only help even the playing field for all intermodal carriers as it will not affect any safety regulations now imposed on our carriers.

Safety regulations will remain under the jurisdiction of each State in the Union.

Section 211 will only affect rates, routes and services of intermodal, all-cargo carriers.

Think you for this opportunity.

Mr. RAHALL. The gentleman from Arkansas.

Mr. HUTCHINSON. Thank you, Mr. Chairman. And I want to commend you and thank you also for calling this hearing I think on

a very important subject on deregulation of the intrastate motor carriers. I want to commend Mr. Petri as well.

I think continued State regulation in the 42 States where that is going on contribute to waste and inefficiency, higher prices, loss of jobs, and a lack of competitiveness in the global marketplace. So Section 211 helps to move us down the road to deregulation. We want to do so equitably and fairly.

And I think it affords a very, very rare and special opportunity. I hope we don't let that escape. I commend you for holding the hearings today. I look forward to hearing our witnesses.

Thank you.

Mr. RAHALL. Do other Members have opening statements they wish to make? The gentlelady from Texas, Ms. Johnson.

Ms. JOHNSON. Thank you, Mr. Chairman, and to our distinguished Chair of the full committee and fellow colleagues. I am very pleased to have the opportunity to address the committee to reiterate my support for Section 211 as it relates strictly to the deregulation of intermodal air carriers. I strongly believe legislation which will afford the intermodal all-cargo air carriers, like Federal Express and UPS an equitable and competitive environment is necessary.

I was appalled to learn that one of my constituents, a national company with two manufacturing plants in my district, runs more than 18 million miles empty each year due to the patchwork of restricted regulations of intrastate motor carriers. However, over the past few weeks, I have received an avalanche of mail and many calls from my constituents on the issue, and their concerns have caused me to take another look at what I think are very serious problems. Should State regulation of intrastate motor carriers be eliminated entirely?

Constituents in my district view motor carrier reform as a jobs issue. Passage of S. 1491 in its present form would effectively end the regulatory authority of the Texas Railroad Commission over intrastate motor carriers and effectively end the benefits it currently provides to small and medium-sized trucking companies who live and operate in Texas.

Section 211 would eliminate any State oversight over the activities of motor carriers as it relates to freight claims, personal injury claims, and other consumer protection issues. Arguably this has been the result of similar Federal initiatives to improve the lives of our citizens via Federal deregulation.

We in Congress have long recognized that highway safety is an issue of national concern, and I support the States' rights to continue to regulate safety, minimal financial requirements, and insurance rates.

Increasing the productivity and efficiency of our domestic manufacturing and distribution system is what keeps America competitive and creates more jobs. However, small shippers and receivers, the much touted backbone of the Nation's economic recovery, could be at a serious disadvantage should S. 1491 be enacted as it currently exists.

I beg my colleagues to be sensitive to the potential two-tiered system of winners and losers which could be created by enactment of Section 211.

As a Member of the committee with jurisdiction over motor carrier issues, I am pleased to be a participant in today's hearings in order to help the conferees make decisions relative to the many complex and difficult issues surrounding this bill.

Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Texas, Mr. Geren.

Mr. GEREN. Thank you, Mr. Chairman. I appreciate very much the opportunity to participate in this hearing and I thank you and Chairman Mineta for holding it.

This is certainly not a new issue for this committee. However, this hearing is unique in that it comes at a time which provides us an unprecedented opportunity to enact much needed deregulation for this important industry.

With the inclusion of Section 211 in the Senate bill, I believe we are beyond the point in the debate as to whether or not we are going to have any deregulation. However, we have a much more important question before us. Namely, who will be covered by that deregulation that the market, the courts, and now the Senate are pushing?

As a supporter of trucking deregulation since coming to Congress, I was pleased to see the Senate take action on this issue. However, I am concerned with the limitations in the final product of the Senate bill. While I support the premise behind Section 211, leaving it as it is currently written would work an injustice on many small businesses all over our country.

As currently drafted, this provision would leave thousands of small, private carriers out in the cold. According to the National Private Truck Council, who we will hear from today, only about 5 percent or roughly 6,000 private carriers would be able to meet the criteria established in Section 211, leaving 95 percent or almost 150,000 private carriers still subject to burdensome State regulations.

If we accept Section 211 as it is, we will be choosing one carrier over another, choosing clear winners and making clear losers and that is wrong. Section 211 as currently written is the death warrant for small—for thousands of small carriers.

Who are these carriers that are being left out? In large terms, these private carriers compromise 80 percent of all commercial vehicles on the road, hauling nearly 60 percent of commercial truck tonnage. On a more personal note, these carriers are familiar to all of us and are in all the districts we represent. They are the trucks used by our local hardware store, bakery or florist. The small businessmen and businesswomen who employ so many of our constituents. We all know who they are and we know how important they are to our communities.

I think it is safe to say that most of these companies do not even come to mind when we think about trucking deregulation. But they should because they are forced to live under the same State trucking regulation as large companies we do know so well.

To accept 211 as it is currently written puts these companies at an impossible to overcome competitive disadvantage. The purpose of any deregulation is to increase competition. However, passing any legislation that deregulates one segment of the industry and not another, will weaken competition, not enhance it.

The time has come to deregulate this industry. Many former opponents of deregulation have reversed their position and now favor it. In my home State of Texas, the Texas Motor Transportation Association recently announced its support for deregulation. But if we do it, it must be done for everybody. We should not only support Section 211, but insist it be broadened to include all motor carriers. Anything less would be wrong.

Mr. Chairman, I thank you for the opportunity to make this statement and I look forward to a very interesting and productive hearing.

Thank you.

Mr. RAHALL. Thank you. Do any other Members of the subcommittee wish to make opening statements? If not, we will proceed to two of our distinguished colleagues and good friends, the gentleman from Illinois, Mr. Hastert and the gentleman from Missouri, Mr. Emerson. Mr. Emerson is a Member of not only our full committee on Public Works but this Subcommittee on Surface Transportation as well.

Gentleman, we appreciate you being with us. Bill, I understand we will hear from you first.

TESTIMONY OF HON. BILL EMERSON, A REPRESENTATIVE IN CONGRESS FROM MISSOURI

Mr. EMERSON. Thank you, Mr. Chairman, Mr. Petri, Chairman Mineta, and Mr. Schuster, colleagues. I appreciate very much the opportunity to testify before this subcommittee here this morning.

As a Member of this subcommittee, Chairman Rahall, I am acutely aware of the leadership and guidance that you and Mr. Petri provide this subcommittee and I deeply appreciate it. I thank you for holding this hearing on a subject that has gotten a lot of attention lately, both here in the House and in the Senate.

I want to first state my general support for the work that has been done in the other body on Section 211 of the Federal Aviation Authorization Act of 1994. Although I realize that one of the reasons for having this hearing is to look specifically at cleaning up some of the language to ensure it serves its intended purposes, I believe that deregulating intermodal all-cargo air carriers is indeed a step in the right direction, most especially in this competitive world in which we live.

Federal laws must not be an impediment to achieving greater productivity, provided appropriate safety standards are maintained. I think we really have a golden opportunity here to do even more to level the playing field with respect to the trucking industry.

The subcommittee, as I know you are aware and the full committee, have held numerous hearings in the past on the issue of deregulating the trucking industry. It is time that we act on correcting the costly inefficiencies and waste in the current system of intrastate trucking regulation.

We have all heard the horror stories of it being cheaper to ship something from Dallas to New Orleans in Louisiana than it is from Dallas to Houston in Texas. Why? Because the State regulations have a stranglehold on shipping goods inside the State.

Mr. Chairman, as you know, I have introduced H.R. 2860, The Trucking Regulatory Reform Act of 1993. My bill would eliminate the filed rate doctrine, streamline ICC licensing requirements, and eliminate the antiquated burdensome State economic regulations for all motor carriers. H.R. 2860 is supported by over 200 small, medium, and large companies, trucking firms, shippers, brokers, consumer groups. At the same time, H.R. 2860 follows closely reforms being proposed in S. 2275 by Senators Exon and Packwood. This bill calls for comprehensive deregulation of the industry. It is time to eliminate these regulations, many of which originally were enacted to insulate intrastate trucking interests from interstate competition. That may have been appropriate at some point in the historic development of our transportation industry, but it is no longer appropriate in this modern competitive era.

If we look across the Atlantic, there is an excellent example of deregulation. The European Community has recognized the benefits of eliminating its internal barriers. It is imperative that the United States follow suit. Strong evidence and study after study has shown that the Motor Carrier Act of 1980 has resulted in substantial savings for the American consumer. There is no doubt that reduced rates, improved service, and greater inventory flexibility and efficiency have occurred since 1980. This is all very documentable. Currently domestic goods require an average of six to ten truck trips before reaching the consumer, whereas imports require only one or two.

In my State of Missouri, although it is still a regulated State, it has substantially liberalized entry into the market but continues to constrain discounting. The pattern of exemptions for regulation in Missouri largely follow the economy rather than the welfare of the consumer. For example, as a major agricultural producing State, Missouri naturally exempts the transportation of agricultural products.

Mr. Chairman, I would hope that all parties in the transportation industry will finally recognize the benefits that deregulation will have on the consumers in this country. Removing Federal economic barriers would allow for market expansion, increased competition, and lower prices. The inefficiencies of circuitous routing and empty backhauls would be eliminated.

It is estimated that it would save millions of dollars in shipping, merchandise, and inventory costs. At the same time, leaving these regulations in place cost American businesses and consumers in the neighborhood of we hear it estimated of $5 to $12 billion a year.

The arguments, I believe, by opponents really no longer hold water. Congress, the Department of Transportation, private studies, all have looked into the red herrings of decreases in safety standards, decreases in service to rural areas as just a couple of examples.

There is very little empirical evidence that deregulation will diminish service to small communities. On the contrary, there is good evidence that service has improved in many cases where deregulation has occurred.

As competition among trucking firms has increased, shippers have begun to demand a much higher degree of reliability and this in turn has stimulated a concern for safety.

Mr. Chairman, in my mind it is not hard to recognize the overwhelming arguments for deregulation of the trucking industry, and I think Congress is likewise coming to this realization.

So I urge my colleagues on this subcommittee to carry out the provisions as outlined in Section 211 of the aviation bill and expand upon them with a comprehensive deregulation of the motor carrier industry. I look forward to working with my colleagues in the resolution of a variety of concerns, but I do believe we have a very large opportunity here to enhance American productivity, competitiveness, profitability, and most fundamentally jobs.

Thank you very much, Mr. Chairman.

Mr. RAHALL. Thank you, Bill.

TESTIMONY OF HON. DENNIS HASTERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RAHALL. We welcome back to our committee former colleague, well, still a colleague, but a former colleague on the committee, Representative Hastert.

Mr. HASTERT. Thank you, Chairman Rahall, and thank you for holding this hearing today. I have to salute Chairman Mineta of the full committee, as our history of working on this issue goes back, all the way back to 1986 and 1987. And certainly also ranking Member Petri who represents the great State of Wisconsin. I have to say Wisconsin deregulation has made us take notice in the neighboring State of Illinois, as the Chairman noted, that there are I think 43 States that are regulated in some manner.

There are five States in this country who are really very onerously regulated, very heavily regulated, and that kind of drove me into this issue in the first place. Over the years, through Chairman Mineta's leadership, we have looked at the bingo stamp issue, economic regulations such as bookkeeping and trying to do one-stop shopping and we have always seemed to be able to solve those issues under this umbrella. I think we have come a long way. I don't think the country was ready for deregulation in 1986 or even in 1991, but the leadership of this committee in putting together the intermodal legislation that pulls together rail, highway and air transportation makes the time right for deregulation now.

A product that we buy on the shelves more than likely has been subject to all types of transportation at one time or another. You can't separate the different ways that we move products across this country. Almost every product we buy goes across State lines, and most of the products that we manufacture in our States are going to be, at least a portion of them, going across national boundaries to compete with products in Europe or Asia or South America.

So the cost we add to those products through regulation is reflected in our ability to compete internationally as well as in consumer prices when they go to buy a product on the shelves. So that leads me to the issue of what happened in the Senate.

UPS (which was probably the largest trucking company in the country, maybe the world) has gone, and probably rightly so, declared itself an air carrier which would deregulate its operations in

the same way as companies like Federal Express that run trucking operations as well as air operations. UPS understands the constraints of regulation and has moved for legislation.

Section 211 allows trucking companies that move 15,000 packets or more by air to become air forwarders and they are exempted from regulation. So who does that leave? That leaves the mom and pop trucking companies. It leaves small trucking companies and also those people who serve small business that are still trapped in regulation.

I have heard from both sides of the situation. There are trucking companies in Illinois (it is a heavily regulated State) that say "Why don't you leave the status quo?" because they feel they are protected in the status quo and under section 211. They are expressing what is in their best economic interest.

But we have also heard from consumers and other trucking companies that want to be able to compete, and they feel that if they are left out of the opportunity for deregulation (maybe 14 percent to 22 percent, we don't know how this legislation is coming down) they will be the only ones regulated and everybody else is deregulated. You certainly don't have a level playing field and really, in the long term, this could be the death knell or the demise of those small companies.

The small business owners who are really the economic engines and the lifebloods wouldn't be able to compete. And I think that is in your jurisdiction. You have to decide. Are you going to cover no one under this? Are you going to repeal the Senate provisions on air traffic carriers and intermodal carriers? Or, are you going to include everybody? There are some folks out there that would like to see you just reject this whole proposal by the Senate, but there are other folks who say if you are going to include air carriers and air forwarders, then everybody should be included.

I think that is a very, very serious question. I think it would be very, very onerous to leave a selected group of the economy or industry out there trapped by itself under regulation in its various States and having everybody else deregulated. I think that is probably the worst of all situations. Even those folks who lean toward regulation don't want to be stuck in the situation of being the only ones regulated. I think you have a logic problem before you and through all the testimony you hear today, you are going to hear this theme. You will have to have to make some tough decisions.

But as I have worked, and have a history of working, with this committee over the years, you have come up with the right decisions and the best decisions for this country. I am going to leave it in your hands. You know what my concerns are and I just hope that you keep in mind that we can't do partial deregulation. You either have to reject it or you have to include everybody under that package.

I really appreciate the opportunity to come before you again. I feel like kind of a regular visitor over here through the years, but I feel very much at home here, too.

Thank you very much for your invitation.

Mr. RAHALL. Thank you, gentlemen, for your testimony and patience with us this morning.

[Mr. Hastert's prepared statement follows:]

Statement of Representative J. Dennis Hastert
Before the Subcommittee on Surface Transportation
of the House Public Works and Transportation Committee

July 20, 1994

Thank you, Mr. Chairman, for inviting me to testify before your Subcommittee. This hearing could not come at a more critical time, as the House of Representatives and the Senate are poised to reconcile differing versions of the Federal Aviation Act of 1993. I commend you for holding this hearing to ensure the House thoroughly examines the critical issue of motor carrier regulation.

During the 101st and 102nd Congresses, I introduced legislation to eliminate all intrastate economic regulation for motor carriers. In today's regulatory environment, states discriminate against interstate motor carriers in order to protect intrastate carriers from competition. This practice creates operating inefficiencies that unnecessarily increase transportation costs with no commensurate public benefit.

The need for change is clear: Something is seriously wrong with the system when there is only a $26.00 difference between the cost to ship tissues from LaGrange, GA and Atlanta, GA (a distance of 83 miles) and from Palatka, FL to Atlanta, GA (a distance of 354 miles). The cost per mile on the route within Georgia is $2.06 per mile, whereas the cost per mile across state lines is only $0.75 per mile.

The laws that cause such obscene inefficiencies end up sticking American consumers for billions. Obviously, we need fundamental reform to our system. Reform began with the Motor Carrier Act of 1980. That act has improved productivity by encouraging more efficient, market-oriented trucking operations and services. Prior to the Act, entry of new carriers into established routes was severely restricted. Passage of the Act provided for more liberal entry into trucking markets. But more needs to be done.

ECONOMIC REGULATION

Although several states deregulated intrastate trucking after passage of the Motor Carrier Act of 1980, 42 states continue to economically regulate motor carriers. In a few states, regulation is comparatively loose, modeled after post-1980 Interstate Commerce Commission (ICC) regulatory policy; but in most market entry remains restrictive, and there is little competition.

In the past, economic regulation was justified by "market failures." It was applied by the federal government to various modes of interstate transportation service for most of this century. The Motor Carrier Act of 1935 sought to control excessive competition resulting from the low volume of shipping at that time. To do this, the act erected strict barriers to entry, and rates and routes were controlled by the ICC. That is, until a decade ago. Today, economic regulation is practiced only by the states.

The present lack of simple and uniform regulation costs those in the motor carrier freight transportation business from $3 to $8 billion a year. Since I know of no public benefit that is achieved through the imposition of these costs, I

believe we should cut them out of our system!

My goals are straightforward: streamline the regulatory process by providing for federal preemption of state regulation of interstate motor carriers. Under my bill, states will no longer be able to limit market entry, rates, contracts or services of any kind.

With uniform regulations on both the federal and state level, the efficiency and productivity of this nation's transportation system will be improved. And as a result, we will help foster a more competitive environment for small business.

The inefficiencies and costs created by state regulation are not born solely by the citizens of the states that regulate motor carriers. Our nation's businesses and motor carriers operate regionally and nationally, so higher costs due to regulation in one state are passed on to consumers every state, creating an unnecessary burden on interstate commerce.

I do not in any way propose to deregulate motor carrier safety regulations. All interstate motor carriers must comply with federal and state safety regulations. Furthermore, I do not advocate the elimination of state safety enforcement authority or funding. As the members of this body know, federal assistance to the states for safety assurance is authorized under the Motor Carrier Safety Assistance Program administered by the Department of Transportation. I fully endorse this program. Federal agencies must continue to strictly enforce safety regulations like insurance requirements, driver qualifications, vehicle safety, random drug testing and commercial driver license requirements.

I might also add that in testimony I have heard on this issue over the years, all evidence seems to indicate that there is no correlation between economic regulation and highway safety. Motor carrier firms have to comply with the exact same safety regulations in a deregulated state as they do in a regulated state.

CONSUMER IMPACT

Policy changes which achieve efficiency gains in motor carrier transport would benefit U.S. consumers as well as firms competing in international trade. These are important goals for carriers, shippers and consumers alike. They affect the cost of doing business, which in turn affects the cost a consumer pays for a box of Tide at the grocery store.

Deregulation has already produced undeniable benefits for the consumer. Why should consumers continue to care about this issue? The answer lies in the former slogan of the ATA, "If you bought it, a truck brought it." State regulation of the motor carrier industry increases the cost of bringing goods to market, and that means higher prices for consumers.

EXPANSION OF SECTION 211

I believe Section 211 of the Senate FAA bill, if expanded to include all players, would achieve the goals of what was formerly called the "Safe and Competitive Trucking Act." Section 211 of the Senate bill would deregulate intermodal all-cargo air carriers conducting 15,000 air-surface shipments annually. This is a tremendous step in the right direction. However, numerous participants in the industry such as private carriers, many truckload and less than truckload

carriers with no freight forwarding operations, most owner-operators and other small carriers are not included in this deregulation opportunity.

These carriers should not be left out. As I mentioned, deregulation costs the trucking industry $8 billion per year. It is no easier for small companies to absorb the costs incurred through regulation than for large companies -- in fact it can be harder. Thus, it is plainly unfair to leave roadblocks in place for a vulnerable sector of the industry while opening new thoroughfares for others.

Instead, further deregulation should be included. Rep. Bill Emerson has introduced H.R. 2860, the "Trucking Regulatory Reform Act," which would eliminate the filed rate doctrine and streamline ICC licensing requirements. The Senate is also moving toward complete economic deregulation. Recent testimony at Senate Surface Transportation Subcommittee hearings recommended that the ICC should no longer regulate the trucking industry. Senators Exon and Packwood recently introduced legislation that would remove these responsibilities from the ICC while allowing the rail functions to remain intact. If this body is to be serious about eliminating the inefficiencies of the trucking industry I urge you to take action in a comprehensive manner.

Let me conclude my remarks by saying that a sign of the maturity of this issue is the number of bills addressing it. To a degree they all would accomplish the same objective. However, Mr. Chairman, I urge you and your members to grant the benefits of economic deregulation to the entire trucking industry, regardless of size.

Mr. RAHALL. I don't have any specific questions except to thank you for the input you have provided this subcommittee previous to my chairmanship and over the years, Dennis, as a former Member, and, Bill, as a current Member. We appreciate very much your participation and help to all of us.

I will recognize the Ranking Minority Member, Mr. Petri.

Mr. PETRI. I know you have important business at the Agriculture Committee. Bill, I want to commend you for the leadership you have taken and the legislation you have introduced in helping us to move forward in this important area. Thank you also to Dennis for your participation.

Mr. RAHALL. Do any Members of the subcommittee have questions they wish to ask our colleagues? If not——

Mr. HASTERT. I have written testimony I would like to submit for the record.

Mr. RAHALL. Sure. I appreciate that.

Mr. HASTERT. Thank you.

Mr. RAHALL. Thank you, gentlemen.

Mr. HASTERT. Thank you.

Mr. RAHALL. Before proceeding with the rest of our witness list, the Chair reminds all witnesses today that all prepared testimony will be made a part of the record as if you read it. The witnesses are encouraged to summarize and then proceed in whatever order they desire.

TESTIMONY OF FRANK E. KRUESI, ASSISTANT SECRETARY FOR TRANSPORTATION POLICY, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY EDWARD H. RASTATTER, OFFICE OF THE SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

Mr. RAHALL. Our next witness is the Honorable Frank E. Kruesi, the Assistant Secretary for Transportation Policy, U.S. Department of Transportation, Washington, DC.

Mr. Kruesi, we welcome you back to the subcommittee once again; you were here not too long ago on the question of the Interstate Commerce Commission. We have your prepared testimony, and you may proceed as you desire.

Mr. KRUESI. Thank you, Mr. Chairman. If I may, I would like to express my appreciation for being here and a special note of hello to Congressman Lipinski from my home city of Chicago, Illinois.

I am pleased to be here to discuss the problems of State economic regulation of motor carriers and the proposed legislative solution now before the Committee. Section 211 of S. 1491 would prohibit States from regulating the trucking operations of transportation companies that offer intermodal cargo services.

The Administration strongly supports this provision because it will eliminate conflicting laws that interfere with efficient intermodal cargo transportation and let us enjoy at the State level those economic benefits that have accrued at the interstate level since the Motor Carrier Act of 1980.

Regulation of the interstate trucking industry by the ICC was largely removed by the Motor Carrier Act of 1980, a fine piece of legislation crafted by this Committee. As a result of that 14 year old Act, we estimate consumer savings of $20 billion per year from

lower freight costs, and more than double that figure, which is to say more than $40 billion per year in consumer savings, when inventory savings are included.

Moreover, no degradation in truck safety has occurred during that time. Economic deregulation does not ensure truck safety any more than economic regulation does. On the contrary, it is direct safety regulation that has that impact. A joint study by California's Highway Patrol and Public Utilities Commission showed that as truck inspections increased, accidents fell.

Moreover, since 1979, the fatal accident rate for medium and heavy duty trucks has fallen by half. The roads are safer than they have been.

However, most of these interstate reforms are not available to interstate or other carriers when they are conducting intrastate trucking operations. Although nine States do not regulate trucking operations conducted wholly within their respective boundaries, 41 States currently do.

Such regulations usually take the form of entry controls, tariff filings, and rate regulation, restrictions on operations and grants of antitrust immunity for carriers to agree on rates. The very diversity of 41 regulatory schemes is an additional problem for national and regional carriers which try to conduct a standard way of doing business. The States are known as the Laboratories of Democracy, but this is a case where the laboratories are not helpful to the economic well-being of our country.

Taken together, it is estimated that State regulations cost consumers between $3 billion and $8 billion per year.

Although much of this cost is borne by consumers and shippers in the regulating States, a significant portion is also paid for by the rest of us in other States. This is a national problem. We all bear the national expense because we purchase goods made by regional, national, and multi-national companies located in States that regulate trucking.

Other expenses are not even counted in this cost burden. In order to escape the unnecessarily high cost of using intrastate hauls, shippers often make transportation and plant location decisions that save their companies money, but have undesirable consequences for the economy and the Nation.

For example, Procter and Gamble has long supplied its customers in Texas from manufacturing plants located as far away as Tennessee, as I am sure Congressman Clement is aware, rather than from its Texas plants because the relatively low interstate trucking costs make it cheaper to do so. The result is more diesel fuel consumption, more traffic congestion and air pollution, and more wear and tear on the highways.

Recently, in the nine western States bounded by the Ninth Circuit, the Court applied the broad preemption provision of the Airline Deregulation Act of 1978 to the trucking operations of FedEx, an air carrier. This exempted FedEx from California's motor carrier controls. Because of its status as an air carrier, FedEx then held a tremendous competitive advantage over its competitors who were still regulated. Although some of its competitors conduct similar operations, they are not organized as air carriers. For example, UPS has an air carrier operation, but the company itself is not an air

carrier. FedEx in contrast was freed from comprehensive paperwork requirements such as tariff filings and financial reporting, and could freely exercise its guaranteed on-time delivery feature.

In the past year, California, Texas, and Kentucky have taken action to exempt integrated carriers of packages weighing less than 150 pounds from State regulation. In another 40 or so States, package express carriers are subject to various regulatory schemes, and many others are not even allowed to compete because they have been denied intrastate operating authority by public utility commissions in those States. The Administration supports the legislation before the Committee, Section 211 of S. 1491, that would help alleviate the burden of State regulation on motor carrier operations.

Depending on how many carriers would qualify for the regulatory relief, Section 211 could provide substantial cost savings for this important industry. It would codify in law the Ninth Circuit FedEx decision, but also would make the regulatory exemption available to a much broader class of carriers.

Airline operations are already free from State regulations under Federal preemption provisions in current law. Section 211 would supplement the Federal preemption provision under current law and preempt States or compacts of States from the economic, nonsafety activities of intermodal all-cargo air carriers as defined in the legislation.

Such carriers include certificated air carriers, such as FedEx, that own and operate aircraft. It also includes what are known as "indirect" air carriers that do not own or operate aircraft, but simply purchase space on the aircraft of direct air carriers and sell it to shippers. Section 211 would exempt from State regulations the operations of motor carriers that are either affiliated with air carriers through common ownership, or that use air carriers a large number of times.

Any direct or indirect air carrier, also called an "air freight forwarder" offering motor carrier operations would fall under this exemption; any regulated for-hire motor carrier could qualify by purchasing such an air carrier, conducting operations as such as an air carrier, or by using such an air carrier at least 15,000 times per year.

We believe, in the Department and in the Administration, that any regulated carrier which has the authority to provide transportation from the ICC or a State agency could qualify if it wished to do so. Nor is its impact limited to intermodal package carriers since it applies to "property", which we interpret to mean freight or cargo of all kinds and sizes, as well as "pieces, parcels or packages."

Thus this legislation would help to even the playing field for those carriers willing to avail themselves of the opportunity. It could eventually yield $3 to $8 billion per year in savings to consumers, if the rates are fully deregulated at the intrastate level. We therefore strongly support this legislation.

The Administration is interested in lowering barriers to entry and enhancing competition. At the same time, we are concerned that the regulatory relief provided could disadvantage some smaller motor carriers, including bus companies that carry packages. We acknowledge that if this legislation is enacted, there may be a tran-

sition period during which smaller, less sophisticated carriers might find it hard to adjust. Much will depend on the way State legislatures and PUCs respond to the change and take actions to ensure the fairness and equity of their regulatory regimes, if 211 is enacted as it is currently written.

We want to find ways to ease that transition and minimize any disadvantage for small operators. We would be happy to work with the Committee in that effort, either in discussing today and later the effect of 211, or working to revise that as appropriate.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions, but I first would like to correct my bad manners. With me today is Edward Rastatter from the policy staff of the Department of Transportation. Dr. Rastatter is an expert who has conducted and overseen many studies nationally and locally on the impacts of intrastate regulation for consumers and for the trucking industry as a whole.

Thank you very much, Mr. Chairman.

Mr. RAHALL. Thank you, Mr. Kruesi.

Let me begin by asking you about the number of States that regulate trucking operations to one degree or another. You stated that the number is 41, and I recognize fully that this may include some States that are liberally regulated, some that are strictly regulated, and some that are in between.

Testimony submitted to this hearing by Federal Express, from whom we will be hearing later, states that 43 States engage in motor carrier economic regulation.

Meanwhile, UPS has submitted a statement that places the figure at 38 States. It is my understanding from the National Association of Regulatory Commissioners that there are 42 States which engage in motor carrier economic regulation. Our colleague here gave another number earlier. We have heard numbers, I think, anywhere from 42 to 38. You know, if we can't even get a handle on just how many States have motor carrier regulation, don't you think it is a little irresponsible to move so quickly on preemptive legislation?

Mr. KRUESI. Mr. Chairman, I think you put your finger on one of the real problems that motor carrier operators have throughout the country in trying to get a handle on the number that regulate and also a handle on what those regulations are, because there are quite esoteric requirements in each State.

The numbers that we have are based on our interpretation of what constitutes economic regulation. And I would say two things in response to your question. First, the number is falling as States understand that regulation of package movements in their States is harmful to consumers, shippers, and carriers.

Secondly, let me just give you my list of who we have listed as deregulated. New Jersey, Delaware, Florida, Arizona, Wisconsin, Maine, Maryland, Vermont, and Alaska. And there may well be some disagreements about whether some states should be listed as regulated because their regulation is very liberal. The correct number is 41 or 42, depending on whether D.C. is counted as a State, which it is for purpose of the Interstate Commerce Act.

It is complex and there are lots of disagreements. I am going through a similar thing right now working with the State Depart-

ment and the Congress on trying to get an accurate count of the number of countries that require insecticide sprays for planes that arrive in the U.S. and it is a very difficult thing to deal with.

This is a similar kind of problem in trying to get an accurate count. I think we are in the ball park on the number. That number has increased the last few years and may well continue to increase as the States themselves begin to understand the positive impacts of truck deregulation that occurred back in 1980, at the impetus of this Committee.

Mr. RAHALL. Let me just make one more stab at this and then I will move on to another point. Our list has the States you have mentioned, except for Maryland, as States without any motor carrier regulation. You have listed Maryland as one without regulation, yet we have it listed as one of the most strictly regulated States based on the information we have in the 1992–1993 compilation of State regulations. As a matter of fact, it is as strictly regulated as my home State of West Virginia.

Mr. KRUESI. My understanding is that Maryland deregulated about two years ago, which would explain, I think, the difference if your study shows the 1993 information. I would be happy to verify that, but it is our understanding that Maryland did in fact deregulate.

Mr. RAHALL. I would appreciate you verifying that; and if any witnesses today can help us on this question it would be appreciated, because I think it is important that we gain a better understanding of exactly which are the States whose laws we are proposing to preempt here. I think that would be basic information that we need for proceeding on this type of legislation.

[The following was received from Mr. Kruesi:]

STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

231 E. BALTIMORE STREET
BALTIMORE, MARYLAND 21202-3486
(410) 333-6000
TTY FOR DEAF: 333-6661

June 17, 1992

TO ALL COMMON CARRIERS OF FREIGHT SUBJECT TO THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION OF MARYLAND:

During the 1992 Session of the General Assembly of Maryland, Chapter 524 (H.B. 247) of The Laws of Maryland was enacted, effective July 1, 1992.

Effective July 1, 1992, this new law terminates the Public Service Commission's authority over common carriers of freight.

For example, after July 1, 1992, the Commission will no longer exercise regulatory or safety authority over couriers, package delivery services, or freight line companies. Vehicles owned by such common carriers of freight will no longer be inspected by the Maryland Public Service Commission. In addition, it will no longer be necessary to file tariffs, annual reports, or insurance certificates with the Commission or to pay annual assessments to the Commission.

Should you have any questions regarding this matter, please contact the Commission's Transportation Division at (410) 333-6062.

Sincerely,

Ronald E. Hawkins

Ronald E. Hawkins
Executive Secretary

edp

cc: The Commission
Bryan O. Moorhouse, General Counsel
Gregory V. Carmean, Executive Director
Donald P. Eveleth, Asst. Executive Secretary
Donald W. Myers, Fiscal Administrator

Mr. RAHALL. All right, let me move off that point.

Let me ask whether it is the position of this administration that State economic motor carrier regulations impede interstate commerce?

Mr. KRUESI. Yes, it is.

Mr. RAHALL. It is. Then how do you interpret that the Congress under the Constitution has the power to preempt State regulations relating to intrastate commerce, without even doing so under the guise of interstate commerce?

Mr. KRUESI. Mr. Chairman, Congress under Article I, Section 8 of the Constitution, has exercised that power which has been upheld by the courts to preempt State regulation of intrastate commerce in air, intercity bus and railroad operations. Given the fact that these issues are very similar to the issues now confronting this Committee, we believe it has that power over trucking.

This Nation's economy is so interrelated that regulatory impacts on shipping costs within one State have impacts and are paid for by consumers and companies throughout the entire country. That is what really is a striking fact.

There was a study that was done for the Department of Transportation about four years ago, conducted at the Wharton School of the University of Pennsylvania. It showed the extraordinary extent to which shipping costs which would seem to be confined to just one State, in fact spilled over and passed on costs to other citizens throughout the country. It is really a rather remarkable study. I would be happy to submit that for the record, too.

Mr. RAHALL. Yes, as well as any further information you have to submit the affirmative response you gave to the question about State economic regulations impeding interstate commerce. I would appreciate any backup information.

Mr. KRUESI. Yes, sir.

Mr. RAHALL. The Transportation Lawyers Association, in a letter I have and I quote, states that the amendment, "Does not and should not be construed as restricting safety regulation authority by the States. The obvious problem that will be created is that a State cannot subject the exempt carriers if it is not able to find these carriers," end quote.

The letter notes that in a study made of DOT's ability to require exempt interstate carriers to comply with its safety regulations, the agency's response was that if it cannot find them, it cannot impose safety regulations on them. How do you suppose the States would be able to ensure that safety requirements are met if the Congress preempts these laws relating to rates, routes and services?

Mr. KRUESI. Mr. Chairman, this Committee has worked very well in developing the Motor Carrier Safety Assistance Program, now funded at the rate of $65 million a year, which allows the U.S. Department of Transportation to fund inspections and inspectors at the State level.

Most of these inspections are conducted by State Motor Vehicle Inspections and police officers, and these are what keep unsafe trucks off the road and detect them, much more so than regulatory efforts. It is quite clear to us from the studies that we have seen.

Again, it is not the economic regulation, but rather the law enforcement efforts of the States and localities with the direction

from the Federal Government, that results in reductions in fatalities and a safer, although still not sufficiently safe, trucking industry. As indicated in my testimony, fatalities in trucking have gone down, and the fatality rate has gone down about one-half since deregulation in 1980.

Mr. RAHALL. You are pretty strong in your support of the Senate language. That is pretty strongly stated in your testimony. Does that mean that DOT supports the language of the Senate in Section 211 word for word, and that you would not support language that would clarify and provide equity among all motor carriers?

Mr. KRUESI. No, I would hope you would not interpret my statement in that way. Let me try to be very clear what it is that I am saying. Section 211, as passed by the Congress and before this committee today, is an extraordinarily——

Mr. RAHALL. Passed by the Senate.

Mr. KRUESI. Yes, I am sorry, is an extraordinarily important piece of legislation which goes a long way toward getting tremendous benefits for American businesses and more fundamentally for American consumers. It does not go all the way and there clearly are some ambiguities.

I certainly would not suggest that Section 211, as drafted, is a model of draftsmanship. It is clearly a stapled-together provision. There is no question about that. My concern and the Administration's concern as well, is that whatever else we do, we want to be sure that the direction of 211 is continued. If, as a result of clarifying 211, the consequence is a continued stalling of the AIP reauthorization or a loss of section 211, that would be unfortunate.

There is no question that this Department and indeed the Administration would be more than happy to work with this Committee to further clarify section 211. I think the concerns that have been expressed by many of your Members today, are legitimate, that there is going to be a transition period. I also indicated in my testimony that the transition effects can be alleviated if it is the will of this Committee and Congress to do so.

But in any event, I do believe that 211 will take us very far in the right direction, and I think it will take us ultimately and inevitably to the full deregulation of intrastate trucking.

The only issue to me then is whether this Committee and Congress wants to take that step more explicitly now; or view 211 in its current state as a major victory, and then either revisit it later or work with States for voluntary deregulation.

A good part of what will make this go better or worse for small carriers around the country is clearly the question of the goodwill of PUCs throughout this Nation.

The biggest concern, Mr. Chairman, quite frankly, is that there will be small carriers that may be trapped in a regulated environment, in a situation where their customers or potential customers have options that are outside the regulated environment and therefore find they are at a very serious competitive disadvantage.

I think that is a very important issue and concern that this Committee appropriately feels the need to address.

Mr. RAHALL. So if we were to provide equity for all motor carriers in a final conference report, the administration would still support that language?

Mr. KRUESI. Yes, we would; and I would be happy to work with you on that.

Mr. RAHALL. Let me move to one final question and that is: How did the administration's support for complete and total motor carrier deregulation, both intra-and interstate, come about? You not only support preemption of State laws, but it is my understanding that you support eliminating the filed rate doctrine and the ICC entry requirements as well, through another piece of legislation.

So I am curious, was this something the President supported during the campaign, or did this position evolve once the administration was in place, perhaps there were holdovers from a previous administration who continued to implement their policies down at DOT?

Mr. KRUESI. Mr. Chairman, as you know, I have had the distinct pleasure and honor of representing the Administration's position in both the House and Senate on both of these pieces of legislation.

I would say two things. First, it clearly is an effort on the part of President Clinton and Vice President Gore. They view this as part of the effort to reinvent government, to look at better ways of doing things and invigorating the country. This Administration views these kinds of efforts, with tremendous cost savings and improved efficiencies in the production and distribution of goods around this country, as helpful to the economy.

The Chair may recall the famous line in the campaign, "It's the economy, stupid," which was a way of reminding those involved in the campaign to keep focused on the economy and the economic consequences of the issues. I think there is a very strong sense in the Administration that these deregulation efforts are very important to the economy. They also allow it to both grow and to breathe more freely.

Mr. RAHALL. Thank you.

The gentleman from Wisconsin.

Mr. PETRI. Thank you. I would like to thank you for your testimony and indicate that, at least speaking for myself, I am eager to work with you as closely as possible to make sure as we do make changes in the direction of the deregulation we do it as effectively as possible and with as little disruption for people as possible.

Mr. KRUESI. Thank you.

Mr. PETRI. We don't want a filed rate doctrine problem if we can avoid it ever again. You did talk a bit in your testimony and again in response to one of the Chairman's questions about the impact of 211 or similar changes on safety. I think you indicated that, if anything, it would have no impact or improve safety. Since deregulation has occurred, safety rates have nearly doubled in the United States in the positive direction.

Mr. KRUESI. Yes. Congressman, the issue of safety and the issue of economic regulation are two separate issues. The improved safety rate for trucks is not a result of whether trucking is regulated or deregulated, but rather the safety programs and laws, and, their enforcement. I was involved in law enforcement for almost nine years before I came here and I know first hand it was the enactment and strong enforcement of effective safety laws that has had the impact.

Mr. PETRI. So I guess you take the position that those who raise safety in this context are essentially raising a red herring.

Mr. KRUESI. Yes, sir.

Mr. PETRI. What about job loss? Do you have any indication as to whether this will result in more or fewer jobs, you know, a couple years down the road?

Mr. KRUESI. Congressman, what is striking to me, in reviewing this issue with people who went through the original deregulation efforts for trucking some 14 years ago is the extent to which that concern was expressed then, and it is a perfectly legitimate concern now.

What has happened as a result of deregulation has been very good. Overall the total number of people who are employed in trucking has gone up dramatically since deregulation. About 600,000 additional jobs have been created in the trucking services industry.

It has also opened up tremendous opportunities for minorities and women and others who previously were denied access to owning trucking companies. They are able now to get into that business and make a go of it. That really is an affirmation of the American dream, and I think that has been a very positive impact.

There have been some trucking firms that have gone out of business and gone bankrupt, and there have been people who have lost their jobs as a result of those bankruptcies, just as happens throughout the country. But overall, as the economy has strengthened, people have been able to find other employment, and indeed have an opportunity to follow their dream and start their own company.

Mr. PETRI. So it is your testimony that if anything further deregulation would do is to produce more jobs and more safety rather than fewer jobs.

Mr. KRUESI. Yes, sir, and that is the view of the Administration.

Mr. PETRI. Finally one last question. I think I heard, and correct me if I am wrong, that to the extent that there are changes in 211, you feel it would make sense to simply not have the paste-it together that would deregulate all trucking in this area rather than leaving some in doubt or some behind a regulatory fence and others who were doing similar things so far as a customer was concerned on the outside.

Mr. KRUESI. As I said, Congressman, I don't want to get into a situation where we lose the important gains of 211. On the other hand, if we are able to improve it and make it clearer, I think that, although lawyers may be unhappy with that result, it clearly would be beneficial. Truckers throughout the Nation would otherwise have to go through the mine fields of the 41 or 42 regulatory schemes under which they would like to function, yes, sir.

Mr. PETRI. So you are saying you would or would not like to broaden it?

Mr. KRUESI. I would be more than happy to broaden it and work with this Committee on that effort. But we do not want to run a serious risk of losing the benefits of 211 as it is drafted now.

If this can go forward with a rapid passage of the AIP reauthorization bill so we can get these airport projects throughout the

country moving forward, and at the same time keep 211, we would be more than happy to do that.

Mr. PETRI. I do think we need to try to clarify the 14,000 shipment test. Some lawyers have been writing in to me saying if someone gets 15,000 airmail letters in the course of a year, they may conceivably qualify as a person who is doing business involving that many shipments.

Mr. KRUESI. Certainly it looks like, reading the Washington Post today 15,000 is an easy number to reach, given what happened with the mail delivery. I do think that is correct. As I indicated in my prepared remarks, there are areas of interpretation that will need to be dealt with; and in addition, the number 15,000 is an arbitrary number.

As you well know, it started out at 50,000 and worked its way down. There is also a very strong argument based on our reading of 211 as it is currently drafted, that gets around the issue of how many shipments are necessary to qualify for the exemption. Subsection A allows for an exemption for a carrier who sets up a freight forwarding operation. The problem, of course, is that would have to be tested in the courts and the public utilities commissions throughout the country, and that is very expensive and time consuming, particularly for small shippers. That is clearly by a burden.

Mr. PETRI. Thank you.

Mr. KRUESI. Yes, sir.

Mr. RAHALL. The Congressman from Tennessee.

Mr. CLEMENT. Secretary Kruesi, a pleasure to have you here.

Mr. KRUESI. Thank you.

Mr. CLEMENT. And two of you from Chicago, Congressman Lipinski over here that I am very, very fond of, my father being an FBI agent once upon a time in Chicago, so I go back a long ways with your great city.

It is my understanding you support or the administration supports Section 211 of S. 1491 for three basic reasons, and that is because the administration feels strongly it would bring about market expansion, increased competition, and lower prices; is that correct?

Mr. KRUESI. Yes, sir.

Mr. CLEMENT. And from my understanding, too, you said that you would support total deregulation as well.

Mr. KRUESI. I would be happy to work with this Committee on that, again, provided we did not end up in a situation where the best drives out the good, so we end up with nothing.

What is really essential, I just want to reiterate this, is we don't want to get in a situation where we lose the opportunity to get as far as 211 takes us, because it takes us a very long way. It takes us so far that it might make it impossible to remain a regulated intrastate carrier because there would not be a protected regulated market, and such carriers would be at a very serious competitive disadvantage. We should not focus solely on the 15,000 packages, however.

Mr. CLEMENT. Being a former Chairman of the Tennessee Public Service Commission and knowing that Commissioner Keith Bissell

from Tennessee will be testifying shortly, what do you see the role of the PUCs and the PSCs in the future if we pass Section 211?

Mr. KRUESI. I think that that would vary, Congressman, from State to State, and I wouldn't presume to be an expert on what those impacts would be.

The Illinois Commerce Commission, for example, performs a great many other very important regulatory functions, including the regulation of electric utility rates, which would continue. What would be eliminated would be economic route and rate setting for motor carriers. To the extent there are States where the only function of that agency would be the route and rate setting for trucking, then that entity ought not continue to exist. I must say that there have been similar discussions going on now for some time here in Congress on the future of the Interstate Commerce Commission, in view of its decreased responsibilities and shrunken size as a result of deregulation.

So I think those are questions which would be considered in States where trucking regulation remains. I think, Congressman, that one good way to look at this would be to contact those States that have deregulated to see what has happened to those public utility commissions in those States, and I would be happy, if you wish, for us to take a look. My guess is that they continue to perform other functions that are more important and perform them well.

[The following was received from Mr. Kruesi:]

We called the public utility commissions (PUCs) in most of the states which have deregulated the non-safety-related activities of motor carriers. Generally, PUC staff in those states have been put to work in other areas of commission responsibility, such as motor carrier safety, electricity, telephone, and gas regulation, or other work within the state's Department of Transportation. We would argue that these adjustments provide benefits to taxpayers and consumers, and we expect that similar adjustments would be made in the remaining states if legislation such as section 211 were enacted.

Mr. CLEMENT. Well, for the record, I would like, Mr. Chairman, for you to submit that information and I might say about Tennessee and I know this is true in many other States as well, I know in Tennessee the Public Service Commission does an outstanding job when it comes to safety programs, and we have been commended on many occasions for having one of the best safety programs in the entire country with our motor carrier enforcement people and what they have been able to accomplish and being able to detect at times about the trafficking of drugs as well as truck safety on our highway system in Tennessee.

Mr. KRUESI. Jim Hall has told me about that and reaffirms your assessment of those programs. You really did hit on the key thing, which is cooperative enforcement, not only with the public utility commissions, but also with law enforcement officials at State, county, and local and Federal levels all working together. That is what makes these programs work.

Mr. CLEMENT. Thank you.

Mr. KRUESI. Thank you.

Mr. RAHALL. The gentleman from Pennsylvania, ranking Minority Member on the Aviation Subcommittee.

Mr. CLINGER. Thank you very much, Mr. Chairman. Secretary Kruesi, thank you for appearing today and for your testimony. You

may have heard my opening statement expressing some frustration with the fact that this issue seems to be the tail wagging the dog of our airport improvement program reauthorization.

Mr. KRUESI. Yes, sir, but it is a very big tail.

Mr. CLINGER. That is right, but you have expressed interest in going further than 211 presently does. You said you want to work with us and so forth but had some reservation about what that might ultimately do to us. My question is because of the context in which 211 appears in an aviation bill is sort of structured in language that is not necessarily appropriate for what is really a motor carrier provision. Wouldn't it be better perhaps if we were to recast this as a straight motor carrier provision because that is really what we are doing here?

Mr. KRUESI. Congressman, I have to admit complete ignorance of the intricacies of the operations of Congress. I am struck and gratified by this subcommittee Chairman's willingness, indeed eagerness, to hold a hearing on this very important subject today which I think is really extraordinary.

I want to commend you for that. I think it is very important. What I would hate to see, as I say, is getting as far as we have gotten here, and then having it derail either 211 or the AIP Bill itself.

Further, one thing that is striking, the Administration introduced the airport improvement program legislation last January, and the emphasis was to get a bill in early so there would be early Congressional action to make sure we were able to keep these programs going, and here we are nearly in August discussing it. So I certainly understand and agree with your concern that we don't want it to continue to delay the bill so that important projects, well over $1 billion in airport improvement projects throughout this Nation, are kept on hold. That is not a good result.

At the same time, I suggest that it is not a good result to let an opportunity for important savings for consumers and the economy slip through our fingers either.

So my suggestion would be, if it is the will of this Committee and Congress to continue to go forward quickly in deregulation of intrastate trucking, we would be delighted to work with you in that effort.

If it really runs the risk of hanging up 211 or the AIP bill, then it is probably not helpful to tinker with 211 and lose those two great opportunities.

Mr. CLINGER. I think that gives me a better idea of what your concerns are here. I take it from what you are saying that you would support going further than we do in 211, that is basically to total deregulation, and I wondered if you had concerns other than the fact that it might result in more controversy and therefore more delay. Do you have any concerns with just the simple fact that if deregulation were to occur across the board for all carriers, that there is a down side to that?

Mr. KRUESI. No, but we would want to be sure that 211 was not in any way impeding the routing of hazardous materials shipments.

There are a few other issues which I address briefly in my testimony. But overall, I think that is a fair characterization of where we are.

Mr. CLINGER. If Congress does not preempt State regulation of intrastate trucking, how long would you anticipate that it might take if it would ever happen that States in their own wisdom might decide to do this?

Mr. KRUESI. Given the fact that we are 14 years beyond Congressional action on deregulation of interstate motor carriers and we now have only nine deregulated states, we are less than one-fifth of the way there.

At that rate, I certainly would expect to be retired before we got all the way there. It is really hard to predict. I worked for Richard Daley as a legislative aide in the Illinois General Assembly for several years, and I am not sure that I would even be able to predict how long it would take in Illinois.

I would not presume to be able to estimate how long it would take in the other States. It would be a long, lengthy process. Congress had the guts back in 1980 to deregulate trucking interstate, and it has had tremendous, and I think it is fair to say uncontested, benefits for this country and its people. Now we have an opportunity to expand them by Congressional action, and it would be wonderful to take advantage of that.

Mr. CLINGER. Well, I would agree with you. I think getting rid of any entrenched bureaucracy is always difficult. There is an inertia factor there that is very difficult to overcome.

Mr. KRUESI. It is difficult, but it is worthwhile.

Mr. CLINGER. It is worthwhile and I support that. Thank you.

Mr. RAHALL. Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman. I want to personally welcome Assistant Secretary Kruesi to the Public Works Committee. Frank and I go back a long way and worked on numerous projects together. He has always been extremely bright, very hard working, and very effective in articulating his position, as he has once again this morning, and I congratulate him upon that.

Mr. KRUESI. Thank you, Congressman.

Mr. LIPINSKI. I have always made it a policy though that in Washington, D.C. when two Chicagoans get together, they don't really discuss anything publicly, only privately.

Consequently, I have no questions for the Secretary or the Assistant Secretary this morning, but I do have to say in all candor that unfortunately on this particular issue for one of the rare occasions that Frank and I have known each other, I have to disagree with him probably 90, 95, 98 percent. It is a pleasure to see you here. Everything I said this morning, I mean sincerely and, Mr. Chairman, I turn it back to you.

Mr. KRUESI. Congressman, let me just add one thing, if I might. I would be more than happy of course, as always, to discuss this as we are wont to do and have on a great many occasions over the years, and I look forward to that conversation and I am obviously available at your convenience, at any time.

Thank you very much.

Mr. LIPINSKI. Thank you very much.

Mr. RAHALL. The Chair looks forward to reading the gentleman from Illinois' statement which he submitted for the record at the beginning of the hearing.

The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman. And Mr. Kruesi, I thank you for your testimony today also. I don't know you as well, but I think I agree with 98 percent of what you said in your testimony.

In your testimony you referred to the concern that some have expressed that Section 211 is a narrow provision that would benefit only a few relatively large companies, UPS and FedEx, and you go ahead and speak of, if given the broad interpretation, it could eventually save $3 to $8 billion. Given that broad interpretation, what percentage of carriers would be deregulated under 211?

Mr. KRUESI. As we read that provision, and this is one of the wonderful ambiguities that will probably keep lawyers busy throughout a great many States for quite awhile, but as we read it, there are two ways in which one could qualify for this.

One of them deals with the 15,000 package minimum; the other is to hold yourself out as a freight forwarder, for there is no requirement on the number of packages or movements.

Section 211 as drafted, in fact, could lead to complete intrastate deregulation of motor carriers. I think that is the correct reading of it. Although it is not unambiguous, I think part of the charm of the legislation as it is currently drafted is that it does have that broad opening.

It also provides that in the event a freight forwarder meets the exemption in a single State, it ipso facto meets the definition throughout all the States. That gives an additional opening that is fairly self-evident, so I don't think it requires a great deal of ingenuity to be able to work through it.

The difficulty is that it would take some help to understand those intricacies, and a willingness to take risks, on the part of initial carriers, to take advantage of section 211 and hope they are successful if challenged by their State PVCs. I think there really is a very strong argument that the 15,000 shipment limitation, which people have focused on, is probably not the correct thing to focus on.

Mr. HUTCHINSON. Well, as charming as the ambiguity would be, wouldn't it be far better to clarify that and make it very clear that we intend that to be a broad deregulation?

Mr. KRUESI. Congressman, again, I go back to my earlier answer. I think that if there is time and the inclination of Congress to do so, we are more than ready to help in that effort. Section 211, as it currently is drafted, even under the relatively narrow reading, goes a long way toward deregulation of intrastate trucking.

That is a major advance, and I would hate to lose that opportunity. So the real question is ultimately a political judgment of how far this Committee and Congress is prepared to go, and how certain you are that, in the effort to make it exactly right, we don't lose the whole effort.

Mr. HUTCHINSON. Well, I understand and I know we have hit this and hit this and hit this and hit this on the administration's position, and it seems to me if I am understanding correctly that

all of the concerns are political concerns that logic and your belief the impact of what deregulation would have would say that it ought to be broadened and it ought to be clarified, but that there is simply political concerns that the gains that 211 as currently drafted would give us might be lost in the controversy.

Mr. KRUESI. Congressman, I don't know whether I would describe those concerns as political or substantive, but the bird in the hand is worth two in the bush.

We have got a lot here in this bill that is very important, both 211 and the entire bill, at least most of the bill which we support. That would be an awful thing to jeopardize on the basis of trying to make it better.

Mr. HUTCHINSON. At the conclusion of your testimony, you acknowledge that there may be a transition period in which smaller and less sophisticated carriers might find it hard to adjust. That seems to me to be acknowledgment that broad interpretation might not always prevail, and it is going to at least be a period of time in which there may be court tests.

Mr. KRUESI. Yes, sir, there clearly would be court tests and these are expensive and time consuming.

Mr. HUTCHINSON. Is there any way to project what kind of job loss or how many company failures there might be during that transition period?

Mr. KRUESI. I don't know how to do that. But clearly, when you move from a regulated environment where shippers have no choice but to use regulated carriers to one where they do have choices between regulated or nonregulated carriers and the regulated carriers are more costly, there will be a serious burden for the regulated shippers during that transition. It puts them at a competitive disadvantage and may well cause some of them to go out of business in the transition.

Mr. HUTCHINSON. Thank you. Thank you. That is all Mr. Chairman.

Mr. KRUESI. Thank you, Congressman.

Mr. RAHALL. The Chair recognizes the Chairman of our full committee.

The CHAIR. Thank you, Mr. Chairman. Thank you, Mr. Kruesi. I apologize for not being here for it, although I have reviewed your statement. On page 7 of your testimony, you discuss how as part of deregulating the various modes that we have to one degree or another preempt the State regulation of what we were deregulating.

Now, is there in your view any constitutional issue which would keep us from preempting State regulation of the economics of trucking companies which move freight within a State?

Mr. KRUESI. Mr. Chairman, in our view, there is no such concern and there are a couple of reasons for that. One of them is Article I, Section 8 of the Constitution which empowers Congress to regulate commerce among the States. That clearly has been interpreted by the courts in very similar situations to include strictly intrastate movements of air carriers, rail, and intercity buses.

The CHAIR. And if we were—I am sorry. Go ahead.

Mr. KRUESI. That is point one. Point two, the reality is that shipments that appear to be strictly intrastate, in fact have costs that

are borne by consumers and businesses throughout the Nation because of the tremendous interconnectedness of this Nation's economy.

The CHAIR. Now, if we were to simply preempt State regulation of routes, rates and services and do nothing more than that, would that by itself keep States from regulating safety, from requiring minimum levels of insurance or from continuing their present regulation of truck sizes and weights, including the idea that different size and weight requirements can be imposed on different routes within the State?

Mr. KRUESI. Mr. Chairman, I do not believe it would have that effect. We believe that safety issues and so forth would continue to be regulated in the same way and if there is a concern or question about that, we would be happy to work with you and this Committee on clarifying that, but that is our understanding.

The CHAIR. Chairman Rahall, as I understand it, raised the point earlier that States, if preempted, might not be able to carry out their responsibilities for safety regulation because the States wouldn't know which trucking companies were operating.

Wouldn't that continue to be true, however, that States would or could regulate the safety fitness of carriers, the sufficiency of insurance coverage by carriers and other things, and couldn't States therefore continue to know exactly which intrastate carriers operated within their boundaries?

Mr. KRUESI. Yes, sir. They certainly could know that, in the same way that the Interstate Commerce Commission, which does not regulate rates because that has been deregulated, knows of regulated interstate carriers; likewise, the Department of Transportation, which regulates the safety of some 280,000 carriers, to which it assigns identification numbers, knows about them and knows about their insurance and safety records as well.

The CHAIR. On page 12 of your testimony——

Mr. RAHALL. Chairman, would you yield on that point?

The CHAIR. Yes.

Mr. RAHALL. Wouldn't the States still have to have some type of filing requirement for fitness certificates, some type of new permits for such safety reasons?

Mr. KRUESI. It would certainly be entitled to do so. This is not an effort to in any way reduce or impede any State's ability to regulate safety for trucks.

We have made a point of emphasizing the importance of working closely with States on truck safety in a great many ways. We want to make sure that insurance requirements are maintained and do not get impeded by 211.

The CHAIR. On page 12 of your testimony you discuss the problems of small trucking companies which would be left out of Section 211's preemption. You mentioned that these carriers, and I quote, "might find it hard to adjust," unquote. On that, Mr. Secretary, you may be guilty of an understatement.

But in any event, if a small carrier is competing for business on a regulated basis, and its competition is competing for that same business on a deregulated basis, isn't that small carrier as good as dead?

Mr. KRUESI. Mr. Chairman, let me apologize for being unduly diplomatic. My answer to your question is yes.

The CHAIR. However we decide to preempt States, would the administration support the idea that we ought to treat all trucking companies alike rather than deregulating some trucking companies and not others?

Mr. KRUESI. Yes, sir, and the reason is that we don't want to put small- and medium-sized trucking firms at a competitive disadvantage. As you point out in your example, that could be a result during a transition period until it was clear through interpretation and litigation, what is the actual breadth and scope of 211.

That would be a very unpleasant and difficult time for those carriers that would be trying to determine whether they were operating on a regulated or an unregulated environment.

The CHAIR. In any one of the seven or eight States that have been deregulated, are you aware of any situations where there has been widespread dissatisfaction, or are they faring as well as those States that are regulated?

Mr. KRUESI. They are actually, Mr. Chairman, faring as well as had been expected, which is better than those States that are still regulated. Arguments regarding the current deregulation controversy also came up in the 1980 discussions, which I am sure you recall because you were at the center of all those. One is the extent to which small communities would not be served after deregulation.

First of all, the reality is that, for the most part, the regulated carriers will not be the ones that serve the small community. Secondly, in the deregulated environment, small communities have continued to be served indeed, sometimes at rates that are lower than they had been previously. Deregulation clearly has been a good thing.

It has provided incredible advantages, namely rates are lower, service is expanded, and employment is enhanced. It has allowed the economy to make better use of just-in-time shipment. It is really a tremendous advantage, and shows Congress acting wisely 14 years ago.

The CHAIR. Well, Mr. Secretary, I want to thank you very much for your responses and for being a one-armed Assistant Secretary of Transportation for policy.

Mr. KRUESI. Thank you very much, Mr. Chairman.

Mr. RAHALL. The Chair would like to ask for a 10-minute recess so Members can go over and answer this roll call vote, but I do believe we still have further questions for you, Mr. Kruesi, if you would be so kind as to stay here.

Mr. KRUESI. I will stay here as long as you wish, Mr. Chairman.

Mr. RAHALL. Thank you.

The subcommittee will come to order, please.

Did the Assistant Secretary go back to revise the policy or——

Mr. RASTATTER. He is still here, sir.

Mr. LAUGHLIN. Mr. Chairman, maybe this is like a murder case I was trying one time when I was a prosecutor. I had talked to my witness in the hallway, a witness on the witness stand, called the witness next and the bailiff couldn't find him and we found out that he had been arrested while he was out in the hallway. But both sides of this dispute got even when the defense lawyer started

calling his witnesses. He found out some of his had been arrested also. So maybe our Secretary has been arrested.

Mr. RAHALL. The Secretary was last spotted at the cafeteria.

Mr. RASTATTER. Mr. Chairman, Mr. Kruesi expected this would be a longer intermission than it is and if you would like to move it along, perhaps you might like to submit the questions for the record and we can answer them.

Mr. LAUGHLIN. Here he comes.

Mr. RAHALL. The Chair will recognize the distinguished gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman, and Mr. Secretary, I enjoyed your comments and—but I want to refer back to—you said, in your opinion, that this legislation on the 211 would actually deregulate all of the intrastate trucking. Did I hear that right?

Mr. KRUESI. Yes, sir, Congressman.

If I may begin by apologizing for being late, I guess my tardiness reinforces the point that a government employee's definition of "on time" is not the same as either Congress' or the private industry, so I think it reinforces the need for this governmental rate deregulation. Seriously, thank you for your forebearance.

Yes, that is correct.

Mr. COLLINS. Are you basing that on a particular portion of the 211 language?

Mr. KRUESI. Yes, sir. I am basing it on the reading of the attorneys in the General Counsel's Office of the Department of Transportation.

Concerning intermodal all-cargo air carrier, there are two definitions. Definition A is the one that allows an air forwarder to be included within that definition and there are—although we don't have an accurate count—somewhere in the order of 4,000 to 5,000 domestic air forwarders throughout the Nation. In order to be a freight forwarder, there is no requirement of a minimum number of packages to be shipped.

Definition B, which most people have focused on, which includes the 15,000 usage minimum which originated at 50,000, really does not apply to the subparagraph above that.

Mr. COLLINS. What about, go back to B. It says in the other carrier, one which has authority to provide transportation. Does that have anything to do with your opinion?

Mr. KRUESI. No. Because if you are looking at B, then all three subparts have got to be included. You have got to both have the authority to provide transportation or you have got to be basically involved with an air carrier that is shipping at least 15,000 times annually; and, three, you have to undertake transportation described in 105(a)(4). So that Subparagraph B really encompasses all three elements.

A, in contrast, has no relationship to B, which is to say, there is no minimum number of packages shipped requirement. That is the difference.

Mr. COLLINS. I want to stay with B, though, in one which has authority to provide transportation. If we completely deregulate, will the States still have, under their PSCs or PUCs, the authority to—to grant authority, the right to grant authority?

Mr. KRUESI. Yes.

Mr. COLLINS. Or will they have to further pass legislation or enact legislation to adopt that?

Mr. KRUESI. No, Congressman. They would still have the authority to do things that would be unrelated to the scope of powers—unrelated to economic regulation, for example, safety.

Mr. COLLINS. That is all I have, Mr. Chairman.

Mr. RAHALL. The gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman.

And Mr. Kruesi, I have got to explain, I told this story while you were out about the witness being arrested and I am glad to see you were not.

Mr. KRUESI. You are not as glad as I am.

Mr. LAUGHLIN. That is true.

Mr. Kruesi, I want to talk to you about safety for a minute. I noted two things in your testimony: You said it was a red herring, and secondly, you said the statistics had improved vastly in the past few years. In my other life, I also defended trucking companies in litigation for which they were sued for very large sums of money for death and injury and maiming people.

Generally, the drivers would say that it was because somebody else did something wrong and there was a mechanical failure in the truck, and before we were too far down the line, the plaintiff's attorneys were looking at our maintenance records.

What is it about this bill that gives you the confidence to say that with the passage of this bill, these improving statistics with fatalities and deaths and injuries caused by trucks being involved in accidents are going to improve?

Mr. KRUESI. Congressman, I am not saying it will improve because of this bill; it will have no impact on the accident-related fatality rate. The experience has been that in dealing with causalities there is no impact from economic regulation.

There are two concurrent trends in the time period since deregulation at the interstate level. One is, there has been a reduction of about 55 percent in the fatality rate for trucking between 1978 and 1992, the period which encompasses deregulation at the interstate level.

Mr. LAUGHLIN. Do you attribute any of that to safety inspection?

Mr. KRUESI. I attribute a lot of that—I attribute most of that, indeed to safety inspections. I attribute a great deal of that to the efforts of this Committee and others in Congress to develop and fund a program that the Department of Transportation runs for inspections. I think that is the key, yes.

Mr. LAUGHLIN. The safety inspection is what I want you to focus on in response to my question. How is this legislation going to change it? And I will tell that you in my State district, I have had a number of people say to me, knowing this legislation was coming along, particularly in the trucking industry, people who use the trucking industry say that they are concerned about the safety aspects of the passage of this bill.

And that is why I want you to address what is going to happen in my State and other States as to their safety requirements. And at the same time, I have got to tell you that last year before this very committee, we had a trooper who was in charge of all safety inspections in my State say that Mexican trucks coming through

my State drive 4 million miles in my State. Three million of that is pass-through going to other States. Where are we going to be on safety inspections state-by-state if this bill passes?

Mr. KRUESI. Congressman, if I may, let me respond in part by giving a very brief biographical sketch. Previous to coming here and working as Chief Policy Offices for Chicago, I was the Executive Officer of the Cook County State's Attorneys Office, which was, depending on which year, the largest or second largest prosecutor's office in the country. We were responsible for working very closely with law enforcement officials at State and local and county levels.

We worked very closely with the Illinois State Police, the Secretary of State Police, the State the Cook County Sheriffs and City of Chicago Police Department, and about 128 other jurisdictions in Cook County. That effort included a great deal of work on truck safety requirements. That included very strict enforcement of truck safety requirements, vehicle regulations, inspections, weight requirements. That is where the big impact occurred.

Enhanced truck safety did not occur because of State economic regulatory functions. State safety law enforcement functions were critical. That was essential.

There has never been, to my knowledge, and I have looked at most of the literature on this, a showing of a relationship of any sort between economic regulation and safety. They are two separate things.

It certainly is possible for an agency that is responsible for economic regulation to simultaneously have very important safety regulatory responsibilities. But it is not the economic regulation that causes safety improvements the reverse. I believe it is clear that economic regulation does not impact positively or negatively on safety.

Mr. LAUGHLIN. Are you saying then that the States will still have the mandate and the authority, jurisdiction, to do the safety enforcement according to their State law and desires?

Mr. KRUESI. Yes, sir, absolutely, and if anything, I think that is an area where we can continue our improvements in various programs, because that is very, very critical. That is the right place to focus on. This Congress has recognized that. The Department of Transportation recognizes it and the data, I think, reflect the fact that as a result of aggressive safety activity at all levels, there has been an improvement in the safety record for trucking in this country.

Mr. LAUGHLIN. So, in your opinion, this bill in no way will impact the State's ability to enforce safety operations, safety inspections of the trucking industry?

Mr. KRUESI. That is correct, Congressman.

Mr. RAHALL. Would the gentleman yield?

Mr. LAUGHLIN. Yes.

Mr. RAHALL. Is that explicitly clear in the Senate language?

Mr. KRUESI. Let me put it this way; it is explicitly clear as anything in 211 is explicitly clear.

Mr. RAHALL. Thank you.

Mr. KRUESI. Which is to say, the focus there is clearly on economic regulation. To the extent it would be helpful to make that even more abundantly clear, that would be appropriate and it may

well be appropriate in the context of the appropriations bill which Congress is considering for next year on the MCSAP program which funds safety programs at the State level.

Mr. LAUGHLIN. Well, since it is explicitly clear, it seems to me, Mr. Chairman, our staff ought to be prepared. And I will be happy to do it, offer an amendment making it even more explicitly clear, or in the alternative, have language in the bill that is—makes it more clear than what we are dealing with.

Mr. KRUESI. Congressman, I would say this; anything that makes it clear that strict safety enforcement is a matter that requires very strong State action and that is encouraged by this Congress and this Administration is something that is a welcome addition.

Mr. LAUGHLIN. That is all I have.

Thank you, Mr. Chairman, Mr. Kruesi.

Mr. RAHALL. Thank you, Mr. Assistant Secretary.

We have no further questions from those Members present, but I do want to ask if you would be so kind as to allow the record to remain open, so Members who were here earlier and had questions, but could not remain can submit those questions to you in writing, and your responses will be submitted for the record.

Mr. KRUESI. I will be happy to do so. And I will be happy to provide materials to the Members that I promised in the course of this.

Mr. RAHALL. Thank you.

The subcommittee will stand in short recess while we answer another roll call vote and then we will proceed with our next witness.

[Recess.]

Mr. RAHALL. The subcommittee will resume its sitting.

Before recognizing our next witness, the Chair will recognize the distinguished Chairman of the Aviation Subcommittee, the gentleman from Minnesota, Mr. Oberstar, who has been with us most of the morning.

Mr. OBERSTAR. Thank you, Mr. Chairman.

Very briefly, I appreciate you holding these hearings in the appropriate forum to discuss the subject of trucking deregulation in whole or in part which has been added to an aviation bill that includes a number of other extraneous matters, including a Senate resolution on policy of the United States toward Korea, sense of the Congress on the Equal Employment Opportunity Commission, Sense of the Senate Resolution on the Whitewater savings and loan issue, and trucking, and behind that the bill that every airport in America is waiting to have passed so that they can get on with important aviation projects.

These hearings have the beginnings at least of illuminating the big unanswered question I have about the amendments added in the Senate proceedings and the Senate Floor, and that is, whether any qualities in the marketplace may be created by the language pending before us. We ought to discern what those are and take the opportunities in open and public hearings to resolve them and deal with them and enact—and go to conference with a proposal that really makes for open, free and level competition in trucking and trucking as it relates to aviation.

You have assembled, Mr. Chairman, an array of witnesses that can help us answer those questions and we have to plumb the depths very closely, Mr. Kruesi had been here. I would say also that it was the Department of Transportation's insistence on a one-year authorization bill for aviation and rejection of our proposal last year for a three-year authorization for the Airport Improvement Program that have brought us to this state today.

If they had agreed a year-and-a-half ago when we first proposed doing what is right for aviation, we would have gotten a multiyear authorization, the trucking issue would be dealt with on its own merits within the motor carrier realm that is within your subcommittee jurisdiction, and we would be discussing this issue in its broadest context in trucking as it should be, instead of as an appendage to an aviation bill.

The second thing is that we should not be doing just piecemeal deregulation. I was disappointed in the DOT statement. It recognized the merits of Federal preemption of intrastate trucking, then stopped short of saying that the legislation should preempt the States on rates and entry. If we don't go that far, then I don't know what benefit we will have accomplished.

States certainly ought to maintain authority over insurance safety and interlining and the filed rate doctrine ought to stay a Federal role, and, unfortunately, Mr. Kruesi didn't address those issues and didn't provide us any beneficial insight on that crucial subject. And maybe they don't want to.

But it is going to be your subcommittee's responsibility to do that and to answer those questions and for this committee to resolve those questions. I think those are the underlying broad policy issues.

Fourteen years ago, I sat on this committee right about over there on that corner, and I think you were just a few doors down from me, and Mr. Mineta right next to me, as we voted in an emotionally super-charged hearing room on trucking deregulation. I think all of us had telegrams for and telegrams against from the same organizations nationally, and State, and I recall very, very vividly thinking, this is a lousy vote, I shouldn't vote for this, and I was right for the wrong reason. It didn't go far enough. I thought it was going too far.

But I think deregulation has immensely benefited aviation and it has significantly benefited trucking, and if we can take the next step in this context and take it further and preempt the intrastate regulation on rates and entry, then we will have done something good and lasting and beneficial for transportation. We will have done it in an intermodal context.

I have to absent myself for a little while to attend to another matter, and I will come back for the balance of the testimony today.

Thank you for this moment, Mr. Chairman.

Mr. RAHALL. Thank you very much, Mr. Chairman, for your comments and insight.

The subcommittee now will proceed with our witness list, and the next witness is Mr. Keith Bissell, the Commissioner of the Tennessee Public Service Commission.

I understand you will be testifying on behalf of the National Association of Regulatory Utility Commissioners.

Mr. BISSELL. Yes, sir.

Mr. RAHALL. Fine. We have your prepared statement and it will be made a part of the record as if actually read.

You may proceed as you desire.

TESTIMONY OF KEITH BISSELL, COMMISSIONER, TENNESSEE PUBLIC SERVICE COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC)

Mr. BISSELL. Thank you, Mr. Chairman.

It is certainly a pleasure to be with you today. I am particularly happy to be here on a subcommittee that Bob—Congressman Bob Clement from Tennessee serves on. Bob was my predecessor on the Public Service Commission and kind of my mentor in regulation, and I am delighted to be here today to testify.

I am probably happier to be here in Washington than any of your witnesses, because back home in Tennessee, as Bob knows, both my colleagues on the Public Service Commission are running for governor against each other, and I get the heck out of town every chance I get.

Congress has legislation under consideration which could have a combined effect of eliminating not only the Interstate Commerce Commission, but the vast majority of Federal and State regulatory authority and oversight over the trucking industry.

I would like to state for the record that while the NARUC, National Association of Regulatory Utility Commissioners, understands the need for a more uniform approach to State regulation, we must oppose the current direction, both in substance and procedure taken by the Congress to address these issues. Such changes deserve the benefit of being discussed, debated and drafted in an open, rational way, rather than in a piecemeal fashion as is now underway.

Now, some of the things that have been said today give rise to my concern about the swiftness in which this legislation is being taken through the congressional process. For example, much has been said about the difference between rates in interstate commerce and rates in intrastate commerce. And, indeed, as the Commissioner for the past 15 years in the State of Tennessee, on many occasions, shippers and legislators and others have called me with a specific example of an interstate rate that appeared to be higher over the same distance than an intrastate rate, that inevitably, when we looked at that rate very closely, we found that indeed the very complex nature of ascertaining rates left one with the incorrect rate, and indeed our rates within Tennessee are very much in line with interstate rates.

There have been instances where those rates in interstate commerce have been lower, but we have found that in many instances, they have been driven that way by shipper pressure in a deregulated environment, which resulted in a noncompensatory rate, and the carrier, if he didn't face bankruptcy, would make it up on a small shipper somewhere where he increased his profit materially.

Indeed, it has been pointed out that under a deregulated environment, that the costs associated with the commerce generally have been driven down. I think probably we have had a number of bankruptcies associated with transportation deregulation on an interstate basis, and there have been efficiencies generally in the transportation business with larger trucks and other things like just-in-time inventory, but indeed I think the efficiencies that have resulted, the vast majority of them are the result of something other than deregulation.

The Assistant Secretary made reference to fatalities, and indeed he indicated that fatalities had been reduced by about half. Indeed, the DOT's numbers indicate that in 1982 and throughout the 1980's, in 1982 specifically, 5,152 deaths. That is in trucks, I believe, that have a gross 20,000 pounds or more. In 1993, we just got the figures yesterday, 4,759 deaths. So I think that deaths related to big truck crashes have remained pretty static over the past 10, 15 years.

Now, what it could be referring to is ton miles—you know, deaths related to wrecks in ton miles or something like that, I am not sure, but the numbers that we have seen certainly indicate that they have remained static, even though we have dramatically increased our focus on trucking safety in many States.

In 1987 in Tennessee, we had 170-some odd people killed as a result of big truck crashes. We dramatically increased the intensity of our truck safety program. We have 140 inspectors out there. We do safety audits before a carrier operates at various times during the year as—or years, as we determine that his safety performance is not up to par. And we do safety audits in conjunction with our MCSAP program. We have drug dogs, eight drug dogs that walk around the outside of trucks when we inspect them and we made some 800 drug-related arrests last year in the State of Tennessee, and most of those were possession cases, but that is 800 by our Public Service Commission in the State of Tennessee.

These programs go far beyond the MCSAP program that we talked about. MCSAP is excellent. It is something we support strongly as State regulators, but we must go far beyond that. States must have the capability of doing that. It must be expressly stated in the legislation.

When there is a truck, car collision and somebody is killed, over 90 percent of the time it is the person in the car that is killed. We believe that because of the current proposals that have been developed piecemeal, have been evolved in the way that they have been, that the legislation is subject to wide interpretation and will result in much needless litigation.

We believe there is a better way. The association at this year's winter meeting established a motor carrier performance review and modernization program in conjunction with the ICC. The ultimate goal of this task force was developed with appropriate industry input, a model uniform Federal State program.

As a matter of fact, just last month in speaking to the National Conference of State Transportation Specialists, I challenged the task force to develop a proposal for intrastate trucking deregulation on a reciprocal basis among States as part of the model State pro-

gram. The task force intends to present its recommendations to Congress and State legislatures within 15 months.

NARUC would like to see the Congress address regulatory reform in a more comprehensive way. Our clear preference is to remove Section 211. We would also prefer that Congress permit NARUC's task force to do its work and return to you next year with recommended legislation..

Now, if that is not the will of Congress, I think it is extremely important that you expressly in this legislation give the States authority to regulate fitness of a carrier before they start to operate in our States. We need to ascertain that this carrier has a safety program, through a safety audit that we do in Tennessee, before any carrier operates, a comprehensive safety audit that convinces us that they have the wherewithal to operate safely within our State before they begin operations.

We do safety audits on a need basis as we ascertain that the carriers are not complying with our safety regulations, and we do it in conjunction with the MCSAP program. We need to have our drug enforcement program. This all needs to be set out in the legislation.

Before a carrier operates in a particular State, we must be able to ascertain that he has the financial wherewithal to operate on a continuous basis and that he be able to fund an adequate safety program, and we need to be able to ascertain that that carrier has insurance that will protect the general public before he begins to operate.

Now, if you deregulate intrastate commerce, the same thing is going to happen following that that happened when you deregulated interstate commerce. The trucking industry is going to have massive bankruptcies. The first thing to go, or one of the first things to go when you have a carrier that starts operating in the red is the safety program. So we are going to have to retain our ability and beef up our ability to address these particular repercussions of intrastate economic deregulation which will permit anybody who can borrow, lease or purchase a truck to operate as a trucking company in our respective States.

In closing then, let me reiterate, NARUC agrees that there needs to be some rethinking about the regulatory structure of the trucking industry at both the State and Federal level. We urge Congress to abort its current efforts in favor of a more contemplative approach.

If Congress decides to move ahead on its current course, we urge you to ensure that each State's ability to enact and enforce laws and regulations to promote safety, insured and fit motor carriers, is not hampered but is strengthened.

Thank you, sir.

Mr. RAHALL. Thank you.

Before I ask you some questions, Mr. Commissioner, without objection I ask that I be allowed to submit for the record a number of letters I received from State regulatory authorities in opposition to Section 211 of the AIP bill. These letters are from the States of Colorado, Montana, New Mexico, Georgia, North Carolina, Idaho, Illinois, Louisiana, Missouri, Oregon, Utah, and the great State of West Virginia. I am also submitting the letter I received from the

National Conference of State Legislatures also opposed to Section 211 as well as the statement by the Oregon Public Utility Commission.

[The information follows:]

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

Robert J. Hix, Chairman
Christine E. M. Alvarez, Commissioner
Vincent Majkowski, Commissioner
Bruce N. Smith, Director

Department of Regulatory Agencies
Joseph A. Garcia
Executive Director

Roy Romer
Governor

94 JUN 30 AM 11: 52

June 24, 1994

The Honorable Nick Rahall
U.S. Representative
2269 Rayburn House Office Bldg.
Washington, D.C. 20515-4803

Dear Congressman Rahall:

RE: Airport Improvement Program Bill (S.1491)

The Colorado Public Utilities Commission opposes those provisions of S.1491 which would preempt state control of intrastate transportation. Enclosed is a copy of a letter written by the Colorado Public Utilities Commissioners expressing opposition to this bill when it was being considered by the Senate.

It is our understanding that the bill, in its present form, would exempt air freight forwarders (AFF) from state regulation when performing intrastate transportation. Any motor carrier can presently claim AFF status since this category of transportation was deregulated in 1986. There is no license issued by any governmental agency for air freight forwarders. Therefore, we believe that this provision would essentially deregulate intrastate freight transportation in the United States.

We believe this is a drastic step. The manner in which this legislation was attached to an unrelated bill has not provided the complete debate necessary to ensure that all the issues have been aired. The potential adverse impact on smaller trucking companies, their employees, and the economies of each state demands a full public hearing on these issues. Only in this way can proper consideration be given to the various competing interests in a deliberative and well thought out process. We, therefore, strongly urge you to vote against any provision in S.1491 which would accomplish de facto intrastate deregulation.

Sincerely,

Bruce N. Smith
Director

LHS:BNS:dh
Encl.

1580 Logan Street, Office Level 2, Denver, Colorado 80203
Telephone Number (303) 894-2000 Consumer Affairs (303) 894-2070
Permit and Insurance (Outside Denver) 1-800-888-0170 Consumer Affairs (Outside Denver) 1-800-456-0858
V/TDD (303) 894-7880 Fax (303) 894-2065 Hearing Info (303) 894-2025

DC

NATIONAL CONFERENCE OF STATE LEGISLATURES

444 NORTH CAPITOL STREET, N W SUITE 515 WASHINGTON, D C 20001
202-624-5400 FAX 202-737-1069

94 JUL 19 AM 9:19

July 14, 1994

Honorable Nick J. Rahall, II
Chairman
Surface Transportation
U.S. House of Representatives
Washington, DC 20515-4803

Dear Chairman Rahall:

On behalf of the National Conference of State Legislatures (NCSL), I am writing to express our concern over legislation to reauthorize the Airport Improvement Program (H.R. 2739/S. 1491). As you well know, the short-term reauthorization for this important state grant program has now expired.

At the heart of the delay in reconciling House and Senate versions is Section 211 of S. 1491 providing for preemption of state regulation of "intermodal all cargo carriers." One year ago, NCSL adopted an amendment to its aviation policy opposing federal preemption of state regulatory authority over the "surface transportation component of an air carrier's operations." By its very nature, all airfreight must be considered intermodal. By following the line of reasoning embodied in Section 211, anytime a surface transportation business integrates its operations with an exempt mode such as air, states are preempted from regulating the intrastate motor carrier services. A company's unilateral decision to mix intrastate surface transportation with interstate air carriage cannot metamorphose ground transportation to an air "rate, route or service." The incidental inconvenience to such a hybrid company of sorting out its intrastate ground operations from its interstate air cargo operations does not provide justification for preempting the legitimate regulatory authority exercised by most states over trucks.

Not only is NCSL strongly opposed to the thrust of Section 211, but providing for indiscriminate deregulation of the motor carrier industry in aviation legislation is highly irregular. The grievance is compounded by the absence of any legislative history or Congressional guidance as to the extent to this provision. NCSL urges that this provision be excluded from any conference agreement and that critical aviation legislation not be further delayed to accommodate hearings on this provision.

While our national policy clearly envisions more of an intermodal transportation environment, the modal purity of existing statutes does not adequately respond to the abrupt creation of an "intermodal all cargo carrier." The conundrum resulting from the

Denver Office 1560 BROADWAY SUITE 700 DENVER, COLORADO 80202 303-830-2200 FAX 303-863-8003

Ninth Circuit Court decision, in *Federal Express Corporation v. California Public Utilities Commission* clearly demands that a comprehensive review of distinct modal statutes be undertaken. The piecemeal approach embodied in S. 1491 may restore parity in the express freight industry, but in all likelihood will disrupt the competitive balance among other carriers subjected to state regulation.

The court decision did indeed create an uneven playing field for transportation companies not covered by the regulatory exemption. The competitive disadvantage experienced by these businesses in the aftermath of this decision stands to be exacerbated, not remedied, by similar national exemptions.

NCSL can appreciate the desire among Members of Congress to correct an competitive imbalance. However, the correction proposed is based on specious arguments; is inappropriately placed in aviation legislation; has an unexamined far reaching impact on the motor carrier industry; usurps regulatory authority exercised by most states; and creates an environment which supports "statute shopping." A precedent could well be set for multimodal or hybrid transportation companies to simply claim a more favorable nomenclature in order to take advantage of specific provisions in law governing certain modes.

Regulation of mixed mode transportation should be fully explored by appropriate Congressional committees without further encumbering aviation programs. NCSL's members and staff will be more than willing to work with you in exploring state and federal regulation of all modes of transportation, and in seeking an appropriate framework for overseeing the operations of intermodal carriers.

Sincerely,

Joseph Preston, Jr.
Chairman
NCSL Transportation Committee
State Representative
Pennsylvania House of Representatives

AL HATCHER, DIRECTOR
TRANSPORTATION DIVISION
1007 VIRGINIA AVENUE, SUITE 310
HAPEVILLE, GA 30354
(404)559-5600

Georgia Public Service Commission

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

(404)858-4501 OR 1(800)282-5813

June 29, 1994

Congressman Nick Joe Rahall, Chairman
Surface Transportation Sub-Committee
2269 Rayburn House Office Building
Washington, D.C. 20515-4803

RE: **S. 1491 (Senate Airport Bill)**

Dear Congressman Rahall:

I have just read your comments on S. 1491 (Senate Airport Bill) in the June 20th edition of TRAFFIC WORLD. As Director of the Transportation Division of the Georgia Public Service Commission, I am in full agreement with you that S. 1491 (Senate Airport Bill), as written, actually preempts the laws of 42 states for just about any trucking company.

In Georgia, all interstate and intrastate truckers are required to at least register with the Georgia Public Service Commission which enables us to require them to have liability insurance. This is a protection that is afforded the public. If the truckers were deregulated, they would not be required to register and the public WOULD NOT BE AFFORDED THIS PROTECTION.

S. 1491 (Airport Improvement Program Bill) as amended, is BAD LEGISLATION.

It is wonderful to know that the field of commercial transportation is in the hands of experts such as you and will be given the appropriate careful study by yourself and your committee. Thank you again.

Yours very truly,

GEORGIA PUBLIC SERVICE COMMISSION

Al Hatcher, Director
Transportation Division

ALH/DH

PLEASE REPLY TO 1007 VIRGINIA AVENUE, SUITE 310, HAPEVILLE, GA 30354

IDAHO
PUBLIC UTILITIES
COMMISSION

Cecil D. Andrus, Governor

P.O. Box 83720, Boise, Idaho 83720-0074

Marsha H. Smith, President
Dean J. (Joe) Miller, Commissioner
Ralph Nelson, Commissioner

94 JUL -6 AM 11:29

June 28, 1994

The Honorable Nick Rahall
United States House of Representatives
2269 Rayburn House Office Bldg.
Washington, DC 20515-4803

RE: S.1491 - Federal Aviation Authorization Act of 1994

Dear Congressman Rahall:

The Idaho Public Utilities Commission (IPUC) was recently made aware of a provision in the Federal Aviation Authorization Act of 1994 (Section 211, S. 1491). The main objective of this provision is to exempt intrastate and interstate trucking performed by companies that also offer air cargo service. This would totally deregulate the purely surface movements of freight by air cargo carriers even when no transportation by air takes place.

This amendment would alter current practice to the detriment of motor carriers not affiliated with an air cargo company. The motor carrier operations of air cargo companies (intermodal carriers) would not be subject to state regulatory oversight even when the movement of goods is totally within a state and no air transportation occurs. In other words, they would have a preferential status unavailable to motor carriers not affiliated with air cargo companies but performing the identical service. The S. 1491 will have a detrimental effect on Idaho trucking companies competing with the intermodal carriers.

The IPUC respectfully urges you to vote against any amendment that would preempt the states' ability to regulate intrastate transportation of property, including rates, routes or service. We feel strongly that deregulation of intrastate trucking should be a state decision.

Located at 472 West Washington Street, Boise, Idaho 83702
Telephone: (208) 334-0300 Facsimile: (208) 334-3762

In conclusion, the IPUC affirms its opposition to legislation that preempts local entities from governing local issues that affect local services and the local economy. Industry giants such as UPS and Federal Express may not represent the interests of Idaho shippers and motor carriers. What works best for their business interests is not necessarily best for Idaho citizens.

Sincerely,

Mary Friddle, Administrator
Regulated Carrier Division

s1491 ltr

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Phillip M. Gonet
Executive Director

June 22, 1994

94 JUN 24 PM 12:07

Transportation Division
Thomas R. Myers, Manager

The Honorable Nick Rahall
United States House of Representatives
2269 Rayburn House Office Building
Washington, D.C. 20515-4803

Dear Congressman Rahall:

Very soon your Conference Committee will meet to reconcile differences in the House and Senate versions of the Airport Improvement Program bill (S. 1491). I am writing to ask that you strongly oppose the provision (Section 211) in the Senate version that preempts state regulatory jurisdiction over trucking firms. The sweeping nature of this amendment to effectively frustrate state motor carrier programs, and the fact that it was introduced in such a way as to deny the states a chance to testify on the bill's effects, argue forcefully that Section 211 of the Senate bill should be deleted in Conference Committee.

The "UPS Bill", as it is commonly referred to, was initially an attempt to resolve a competitive problem created for United Parcel Service when a federal court judicially exempted its biggest competitor, Federal Express, from state jurisdiction. Most administrators of state motor carrier regulatory programs shared UPS's astonishment with the court's ruling. They empathized with UPS's situation and understood the company's wish to legislatively correct the problem.

Unfortunately, the provision which has emerged in the Senate bill is radical surgery to a cosmetic problem. Rather than address the narrow issue which the federal court decision dealt with, Section 211 of the Senate bill would grant two of the largest transportation firms in the nation, Federal Express and UPS, carte blanche access to intrastate markets for any line of the trucking business they chose to enter, while their smaller competitors remain regulated. This is patently unfair.

Further, the Senate version is in another sense is a legal nightmare in that it includes in the definition of an exempt "intermodal all-cargo air carrier" the concept of an "indirect cargo air carrier". An air freight forwarder is defined in federal regulations as an indirect air carrier, but freight forwarders were deregulated in 1986. Since anyone can assert that he is an air freight forwarder, presumably this makes Section 211 a total deregulation bill. Add to this the idea that a motor carrier which sends 15,000 letters by air per year is also exempt effectively creates loopholes that anyone can use to escape state jurisdiction.

527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280
Telephone [217] 785-4869 FAX [217] 782-9244

Once some carriers use those loopholes to gain a competitive advantage, others will have to use the same provisions for defensive reasons. This will effectively deconstruct 42 programs which state legislatures have supported for many decades, and it will be done without state officials even having the opportunity to present their views on this important subject.

The president of a major Illinois carrier who opposes the UPS bill told me he would arrange to mail 15,000 envelopes per year by an air cargo carrier to qualify for the exemption, even though he knew that would be a preposterous waste of money and resources. Subsequently he discovered that another provision of the bill would allow him to secure his competitive advantage by calling himself an air freight forwarder, even though he does no freight forwarding. I was also informed that a major transportation firm which prefers deregulation refuses to support this bill because it forces honest people to behave dishonestly by misrepresenting their business operations to avoid state law.

In summary, the Section 211 provision of the Senate version of the Airport Improvement Program bill is flawed from three different standpoints:

(1) Substantively, it unwisely deregulates intrastate trucking when a minor legislative adjustment is at most all that is needed to correct Federal Express' judicially mandated advantage over UPS;

(2) Procedurally, it cavalierly guts an important state responsibility while denying the states any chance to comment on the bill, much less have any input in drafting it; and

(3) Ethically, it encourages -- and nearly compels -- state licensed motor carriers to misrepresent their operations to qualify for a federally sponsored exemption to state law.

By any measure this is bad legislation.

Several months ago Chairman Gail McDonald of the Interstate Commerce Commission asked the National Association of Regulatory Utility Commissioners (NARUC) to work with the ICC in modernizing and harmonizing the rules and regulations which govern state regulatory programs. I was asked to chair the working group which would develop a proposal for uniform state and national trucking regulation. This ambitious effort has been effectively paralyzed by the UPS bill, since the States don't know what -- if any -- jurisdiction the Section 211 provision will leave them. This is another very unfortunate consequence of the UPS bill.

For all of the above reasons, I would urge you to vote to exclude the UPS language from the final airport bill when it is discussed in Conference Committee. Thank you for your consideration of this request.

Sincerely,

Thomas R. Myers

Thomas R. Myers
Manager- Transportation Division

Louisiana Public Service Commission

Kathleen Robinson Blanco
Commissioner, District One

333 Jefferson Street, Box 10
Lafayette, Louisiana 70501

318/262-5377
800/256-8804
FAX 318/262-5382

July 14, 1994

Honorable Nick Rahall
U.S. House of Representatives
2269 Rayburn House Office Bldg.
Washington, DC 20515-4803

Subject: Federal Express/UPS bill

Dear Congressman Rahall:

We have just learned that the Federal Express/UPS bill has been passed by the Senate and is now being considered by a conference committee to reconcile differences in the House and Senate versions of the Airport Improvement Program bill (S. 1491). As we understand it, the effect of this legislation would be to exempt intrastate or interstate freight operations from any regulation or standard for the carrier's rates, routes or services, whether they took place through ground/air movements or exclusively from point to point on the ground as long as the company providing the transportation had air cargo authority. As air freight forwarding certificates are apparently not difficult to obtain, the possession of one of these certificates could be used to circumvent regulation of trucking that in fact was exclusively ground transportation.

The effect of passage of this provision would be to place those carriers who do not have air cargo service or those who hold purely intrastate service at a considerable disadvantage to those holding air cargo authorities (such as, for example, Federal Express and United Parcel). It does not seem desirable to give these large carriers a further competitive advantage over those who provide the transportation needs within the state. Regulated carriers have a duty to provide service to the public at a fair price. Unregulated carriers have no such duty. They can choose to serve only the most lucrative market and charge whatever they please.

As well as providing needed services, the regulated motor carriers contribute to the financial well being of the State. The passage of this amendment could result not only in financial hardship for the intrastate and/or smaller carrier, it could also

deny to the State revenues currently collected as these carriers would be excluded from the Single State Registration System, which the last Congress put in place, as well as Intrastate regulation.

We ask that you closely scrutinize the proposed legislation especially in its present broadly worded form. Passage of this legislation would have adverse economic impact on smaller trucking companies and their employees, as well as State treasuries. We, therefore, urge you to consider our comments and opposition to this bill.

Sincerely,

Kathleen B. Blanco

Kathleen Babineaux Blanco
Chairman
Louisiana Public Service Commission

KBB/gf

State of Missouri
Department of Economic Development

Division of Transportation
P O Box 1216
Jefferson City, Missouri 65102
314 751-7100

94 JUN 29 AM 9:00

Mel Carnahan, Gove
Joseph L. Driskill, Dire

Stephen R. Waters, Dire
Administrative Law Juc
Arthur L. Con
Vicki J. Goldam
Elizabeth He

June 24, 1994

The Honorable Nick Rahall
2269 Rayburn House Office Building
Washington, DC 20515-4803

Dear Congressman Rahall:

I would like to express my opposition to Senate Bill 1491 which believe is in conference at this time.

I have enclosed some background information for my reasoning. I would appreciate your consideration and a "NO" vote on this issue.

Sincerely yours,

Stephen R. Waters
Director

SRW/ab

Attachment

COMMENTS ON
SENATE BILL 1491
AIRPORT IMPROVEMENT PROGRAM

Within this bill, Section 211. Intermodal All-Cargo Air Carriers, amends the Federal Aviation Act of 1958 to allow an air carrier (including an indirect cargo air carrier) when transporting property between states or wholly within any single state by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement) to be exempt from rate, route or service regulation by any state, political subdivision thereof or an interstate agency.

This section of the bill was initiated on behalf of two competing express service carriers United Parcel Service (UPS) and Federal Express (FED Ex). UPS believes that two decisions favor FED Ex operations over theirs when it won a victory in the California federal court that ruled it was exempt from the states's trucking regulations and the concessions FED Ex received by the state of Texas where that state mimic the California decision. FED Ex would like to open new markets to compete with UPS without having to comply with state regulations. These two companies have also sought support of large less than truckload (LTL) carriers who know that without some exception for their operations, they will see a greater portion of their market shifted to these two competitors.

The legislative body should not consider legislation that would continue to decrease the number of motor carriers transporting LTL freight thereby creating an oligopolistic industry. The Motor Carrier Act of 1980 (MCA) increased the number of motor carriers in the market and increased competition. This ease of entry has seen some unwanted side effects. LTL operations unlike truckload (TL) operations requires a heavy investment in fixed capital. Break bulk facilities are needed to move LTL freight to its proper destination. LTL operations have historically survived because of cross-subsidation between the services they provided. The TL portion of their operations was their most profitable segment. The small weight shipments of their LTL operations was their most unprofitable segment. The Motor Carrier Act of 1980 shifted TL freight away from the LTL motor carriers. Along with increase labor and other costs and the large amounts of discounts, a large number of LTL motor carriers have filed for bankruptcy or simply closed its doors.

In 1986, this state adopted some deregulation similar to the interstate deregulation when it opened entry requirements to TL markets (with some exceptions) to fit, willing and able. These regulatory changes along with the interstate deregulation has effected our intrastate motor carriers. The state of Missouri has recently seen the shutdown of it third largest intrastate LTL

operator and the consolidation of its second largest motor carrier with an interstate motor carrier operation. The state has seen several other large intrastate LTL carriers "disappear" in the past five years.

The safety of the motor carrier industry became a great concern after the MCA. The nation now spends millions and millions of dollars to monitor motor carrier safety because many motor carriers who thought they found their pot of gold at the end of the rainbow by establishing a trucking company cannot afford to put on new tires or maintain their braking systems on equipment they use on our highways.

While the number of LTL operations continue to be lost in the market, the legislative body now wants to pass legislation to give concessions to a motor carrier whose total revenues exceeded 12 billion dollars in 1992 and who feels that it is placed at a disadvantage by state regulatory requirements in its competition bid against another express company. This single motor carrier generates almost the same amount of revenue as all (148 - 1992 figures) national LTL operators who have revenues over 1 million dollars. It is hard to understand how this motor carrier is disadvantaged and cannot compete accordingly.

This bill would allow for total intrastate deregulation as it pertains to the transportation of any movement of freight whether that freight had a subsequent or prior air movement by an air carrier (including an indirect cargo air carrier). This legislation as written would not allow the states the ability to enforce or determine who would qualify under such terms. Since air freight forwarders were deregulated in 1986 and are not required to be registered with the Interstate Commerce Commission (ICC) any motor carrier could "claim" that it is a freight forwarder and qualifies for this pre-emption at the state level and the state would not be able to verify that claim.

States have the right to determine on a state by state basis its own regulatory needs. Transportation deregulation does not necessarily establish a market of "perfect competition". Deregulation favors the large shipper over the small shipper. At the intrastate level in this state where rates were allowed to be discounted without any floor limits from 1984 to 1990, a 1991-1992 shipper survey revealed "...that there is statistically significant relationship between a Shipper's size (as measured by Annual Total Revenue) and the likelihood that the shipper will or will not receive discounts on Missouri Intrastate motor freight." The state regulatory agency was even petitioned by the freight industry in 1990 to freeze the level of discounting because the motor carriers could not survive with the continued shipper pressure for greater and greater discounts.

This state, like many others, have a large number of small shippers. It is imperative to this state's economic development to ensure a good transportation industry. A good transportation system should not be based on excess capacity, aging equipment and numerous bankruptcies all which have been seen as consequences of the Motor Carrier Act of 1980. A viable, healthy transportation system is an essential to economic growth. A state should have the right to regulate or deregulate as it finds necessary dependent on the needs of that state and its public. The terrible flooding that occurred in this state last year brought to light many unhappy transportation movements in non-regulated areas. The states should be the overseer of its citizens needs as those needs change.

This state therfore would like to voice its opposition to this bill in its current form.

PUBLIC SERVICE COMMISSION

94 JUL 12 PM 3:34

1701 Prospect Avenue • PO Box 202601
Helena, Montana 59620-2601
Telephone: (406) 444-6199
FAX #: (406) 444-7618

Bob Anderson, Chairman
Bob Rowe, Vice Chairman
Dave Fisher
Nancy McCaffree
Danny Oberg

July 8, 1994

Honorable Congressman Nick Rahall
Chair, Surface Transportation Subcommittee
B-376 Rayburn
House of Representatives
Washington, D.C. 20515

Dear Congressman Rahall:

Your subcommittee on Surface Transportation will soon be considering S. 1491, an Airport Improvement bill. A part of the bill preempts state regulation of transportation that should, in the best interest of sound national policy, remain subject to regulation at the state level. This preemption is bad policy and we urge you to oppose it as an impediment to valid regulation by the states.

Montana regulates intrastate transportation and has done so with success for over seventy years. The public interest in this state has been well served by such regulation. Montana has preserved and maintained such regulation as sound economic policy which provides stability in the motor carrier industry and shipping services to rural areas.

Our understanding is that this matter of preemption originally arose to allow United Parcel Service to fairly compete with Federal Express after a federal court case had created an inconsistency in the way regulation was to be applied to each. The better option is not to deregulate United Parcel Service and other carriers, but to repeal the court decision by making the law applicable to Federal Express.

Please include this letter in the hearing record. Thank you for considering our views.

Sincerely,

Bob Anderson

Bob Anderson
Chairman
Montana Public Service Commission

cc: Congressman Pat Williams
NARUC

State of New Mexico
State Corporation Commission

ERIC P. SERNA
CHAIRMAN

TELEPHONE
Office 827-4529

FAX:
827-4734
827-4387

P.O. Drawer 1269
Santa Fe
87504-1269

July 6, 1994

Congressman Nick Rahall
2269 Rayburn House Office Bldg.
Washington, D.C. 20515-4803

SENT VIA FACSIMILE

Dear Congressman Rahall:

The New Mexico State Corporation Commission, the regulatory body charged with the authority to regulate intrastate motor carrier transportation in New Mexico, strongly opposes the part of S. 1491 that would allow anyone who claims status as an air freight forwarder to be exempt from intrastate regulation. Allowing virtually any motor carrier to claim air freight forwarder status would, in effect, deregulate state regulation of motor carriers.

For years, the federal government and the states have regulated motor carriers in a partnership that has served this nation well. The partnership has been one based on the ideal that both governments have legitimate interests including health, safety and economic concerns in the regulation of transportation. To unilaterally pass a law that would prohibit one partner from exercising their regulatory authority would be patently unfair and would break the bond of trust that the states and federal government have formed and nurtured for many years. Please note our opposition to this provision of S. 1491.

Sincerely,

Eric P. Serna
Chairman

State of North Carolina JUL -6 AM 4:49

Utilities Commission

Post Office Box 29510
Raleigh, N. C. 27626-0510

June 27, 1994

The Honorable Nick Rahall
United States House of Representatives
2269 Rayburn House Office Building
Washington, D. C. 20515-4803

Dear Representative Rahall:

The North Carolina Utilities Commission has been advised that S. 1491, the Airport Improvement Act, has been passed by the Senate and is now being considered by a conference committee to reconcile differences in the House and Senate versions. This legislation contains a provision which seeks to exempt from regulation intrastate and interstate transportation performed by companies that also offer air cargo service regardless of whether the carrier transports goods within a single state by aircraft or motor vehicle.

The Commission opposes this provision because of its preemptive nature. The Commission believes that each individual state has the right to oversee its intrastate motor carrier industry in a manner in which it deems appropriate for the public interest. It is the individual states who are more familiar with intrastate operations, traffic patterns, and the overall needs of the motor carriers as well as the shippers. The Commission's regulation of intrastate carriage over the years has insured a viable statewide transportation system including service to small towns and rural areas.

The Commission further opposes this provision because it gives an unfair advantage to those carriers who offer air cargo service by exempting from regulation purely surface movements of freight when no transportation by air takes place. Motor carriers who do not offer air cargo service but provide the same type of purely surface transportation of freight will continue to be regulated. This creates a very unlevel playing field for intrastate carriers who provide the same basic transportation service.

430 North Salisbury Street Raleigh, North Carolina 27603
Telephone No: (919) 733-4249
Facsimile No: (919) 733-7300

We request that you oppose this deregulation provision in S. 1491 so that North Carolina and other individual states can continue to insure a competitive trucking industry to meet the needs of all its citizens and businesses.

Sincerely,

Ralph A. Hunt

Ralph A. Hunt,
Chairman

RAH:bas

Oregon

PUBLIC
UTILITY
COMMISSION

94 JUN 28 AM 11:31

June 24, 1994

CONGRESSMAN NICK RAHALL
HOUSE OF REPRESENTATIVES
2269 RAYBURN HOUSE OFFICE BLDG
WASHINGTON DC 20515-4803

RE: Opposition to Proposed Legislation Preempting State Regulation of Intrastate Motor Carrier Transportation

The Oregon Public Utility Commission wishes to express its strong opposition to a floor amendment included in the Senate version of the Federal Aviation Authorization Act of 1993. This legislation would effectively deregulate almost all intrastate motor carrier services. The proposed legislation would exempt from state economic regulation any trucking company affiliated with an intermodal all-cargo air carrier through common ownership, or any carrier that utilizes or is affiliated through common ownership with companies that utilize air carriers at least 15,000 times annually. Furthermore, the bill defines "air carrier" to include indirect cargo air carriers such as air freight forwarders. Anyone can easily qualify as an air freight forwarder. Under this legislation virtually all intrastate motor carriers could become exempt from state regulation.

We are especially concerned about the way Congress has handled this legislation to date. We think that any proposal of this magnitude should be debated openly before Congressional committees. This particular proposal is being pushed through without opportunity for interested parties to comment in any way. This is clearly not an acceptable way to cause a major shift in public policy.

We oppose any move by Congress to preempt the states' right to regulate intrastate motor carriers. We believe that economic regulation of the trucking industry benefits the citizens of this state, especially in rural Oregon, and helps to preserve the Oregon economy and quality of life. We respectfully request your consideration of our position and ask that you oppose the Senate amendment to the Aviation Bill.

Joan H. Smith
Chairman

Ron Eachus
Commissioner

Roger Hamilton
Commissioner

Barbara Roberts
Governor

550 Capitol St NE
Salem, OR 97310-1380
(503) 378-5849

1/2296NN

State of Utah
DEPARTMENT OF COMMERCE
DIVISION OF PUBLIC UTILITIES

Michael O. Leavitt
Governor
Constance B. White
Executive Director
Frank Johnson
Division Director

Heber M. Wells Building
160 East 300 South/P.O. Box 45807
Salt Lake City, Utah 84145-0807
Phone: (801) 530-6651

Dear Sir,

We are opposed to S. 1491, particularly its provision to allow all indirect air cargo carriers to be exempt from State regulation.

This provision would essentially deregulate the states rights to regulate intrastate motor carriers and we are opposed to such action.

We would appreciate your efforts to modify this bill.

Thank You,

Lee R. Zenger
Assistant Director

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 753-6780

STATEMENT ON AIRPORT IMPROVEMENT BILL

HOUSE PUBLIC WORKS COMMITTEE

GOVERNOR MIKE LOWRY, WASHINGTON STATE

I am concerned with the inclusion of Section 211 in the Airport Improvement Bill. Section 211 would prevent states from regulating the operations of " intermodal" small package companies---companies that have both truck and air operations. It is my understanding that routes, rates, and services would be regulated under this provision. A number of individuals in labor and in the trucking industry have expressed concern that the wording of the amendment is so broad that it could exempt companies from state insurance and safety regulations.

Section 211 was added in the Senate as an amendment. It did not go through the hearing process. There has been little, if any opportunity for public discussion on this issue. There have been no studies done on economic impact, impact of safety, and other issues associated with deregulation. We should not be enacting deregulation legislation on such a piece-meal basis without understanding the impact on this important industry.

This is not to say that the State of Washington opposes deregulation of this or other industries. As Governor, I have launched a major effort to review and reform the regulatory structure in our state. Any reform must strike a balance between protecting the public and insuring a competitive economic environment. The State of Washington would like to work with the Congress and the Administration on a comprehensive approach to these regulatory issues. At this point, it may be premature to enact Section 211 without the proper analysis and debate.

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July 11, 1994

The Honorable Nick Rahall
U.S. House of Representatives
2269 Rayburn House Office Building
Washington, DC 20515-4803

Dear Congressman Rahall:

NARUC has advised the states that a hearing on the Airport Improvement Program bill (S. 1491) has been scheduled for July 20 before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation. I am writing to ask that you strongly oppose the provision (Section 211) in the Senate version that preempts state regulatory jurisdiction over trucking firms.

Senate Bill 1491, the "UPS Bill" as it is commonly referred to, was initially an attempt to resolve a competition problem created for United Parcel Service when a federal court judicially exempted UPS' biggest competitor, Federal Express, from state jurisdiction.

Rather than address this narrow issue which the federal court decision dealt with, Section 211 of the Senate bill would grant two of the largest transportation firms in the nation, Federal Express and UPS, carte blanche access to intrastate markets for any line of the trucking business while their smaller competitors remain regulated. This is patently unfair.

This provision includes in the definition of an exempt "intermodal all-cargo air carrier" the concept of an "indirect cargo air carrier". An air freight forwarder is defined in federal regulations as an indirect air carrier, but freight forwarders were deregulated in 1986. Since anyone can assert that he is an air freight forwarder, presumably this makes Section 211 a total deregulation bill. Adding to this dilemma is the premise that a motor carrier which sends 15,000 letters by air per year would also be exempt, effectively creating loopholes that anyone can use to escape state jurisdiction.

In summary, the Section 211 provision of the Senate version of the Airport Improvement Program bill is flawed from three different standpoints:

(1) Substantively, it unwisely deregulates intrastate trucking when a minor legislative adjustment is at most all that is needed to correct Federal Express' judicially mandated advantage over UPS;
(2) Procedurally, it cavalierly guts a comprehensive state regulatory scheme while denying the states any chance to comment effectively on the bill, much less have any input in drafting it; and
(3) Ethically, it encourages -- and nearly compels -- state licensed motor carriers to mispresent their operations to qualify for a federally sponsored exemption to state law.

For all of the above reasons, I urge you to vote to exclude the UPS language from the final airport bill when it is discussed in Conference Committee. Thank you for your consideration of this request.

Sincerely,

Boyce Griffith
Chairman

BG:bp

Mr. RAHALL. Mr. Commissioner, one of the allegations that companies like Fed Ex and UPS are making is that innovation is often sacrificed at the altar of State economic regulation of the motor carrier industry. In effect, the argument is that the States act like a straightjacket in their approach to regulating rates, routes and services, and this hinders the ability of trucking companies to meet the demands of their customers, especially in terms of the types of services they can offer.

What is your counter to that argument?

Mr. BISSELL. In my familiarity with the way that States handle economic regulation, it is almost impossible for me to comprehend how a State would hesitate to let a carrier like Federal Express operate in intrastate commerce.

You know, I think their problem was that they had a uniform system that they wanted to put into effect and they were concerned in some States and had some indication that some States would not let them have a uniform tariff or uniform practices.

I agree, sir, as I indicated in my testimony, that some reform of our economic regulation is necessary. I would just simply hope that it occur in a more studied process where other parties have a chance to have significant input after extended hearings.

Mr. RAHALL. To what extent, in your opinion, are truck interstate and intrastate movements intertwined? In other words, do you see any validity to contentions that State regulations impede interstate commerce?

Mr. BISSELL. No, sir. I don't know how you can extend—I have heard a lot of theories about what affects interstate commerce from judges and lawyers and regulators, but I don't understand how—what the connectivity of a movement between two points within the State of Tennessee has with interstate commerce.

Mr. RAHALL. You don't see any connection to the economy or the cost of goods or the cost to consumers?

Mr. BISSELL. You know, again, I have had on numerous occasions in the 15 years that I have been a Commissioner instances brought to my attention which indicate that rates in intrastate commerce are higher. In a vast majority of those instances, they have not been higher.

So the connectivity, there would not be any detriment in any way, in my mind, to intrastate regulation or intrastate transportation to interstate carriage. I don't understand fully the connectivity.

Mr. RAHALL. As you know, several States do not regulate the motor carrier industry in terms of rates, routes and services. To your knowledge, has the public interest been adversely affected in those States?

Mr. BISSELL. In those States that do not regulate?

Mr. RAHALL. Do not.

Mr. BISSELL. You know, I have had different opinions. I have talked to commissioners and former commissioners in the State of Florida, for example, which was one of the first States that deregulated, and they indicated that—well, many of them indicated, some of them said there was no impact, but several of them indicated that they thought there was indeed an impact on a small shipper in that particular situation.

I do know that after the Bus Deregulation Act of 1982, at which time many people said that they thought that would have no impact on the number of cities served by buses in this country, after 10 years, there was a 52 percent reduction in a number of communities served by these bus lines. That is the only detailed study that I know, and most of those communities that drop—no longer had service, were cities of less than 10,000.

Mr. RAHALL. You noted in your testimony that what really should be done is to harmonize State and Federal regulation. However, as you know, there is a growing mood in the Congress to eliminate the last vestiges of the ICC's jurisdiction over interstate motor carrier commerce, especially in terms of the filed-rate doctrine and obtaining certificates of public convenience and necessity.

In the event that the ICC's jurisdiction over entry and tariff filing is revoked, and the Commission is then pretty much limited to matters related to motor carrier fitness and insurance requirements, would you still support such a harmonization approach between State and Federal regulation?

Mr. BISSELL. Well, I—that is a tough question. I think that indeed the ICC performs some important functions. It could be that many of those functions could be performed by State regulators. I, indeed, believe that some significant change in the way we handle the economic regulation really ought to occur, and I know that has occurred in interstate commerce. And, indeed, the ICC does not have the functions it once had, and it is possible that many of those functions could be performed by States or the DOT.

Mr. RAHALL. Let me follow up on a question that you may have heard Chairman Mineta and me asking Assistant Secretary Kruesi about the issue of insuring that States can enforce their fitness requirements under the legislation that has passed in the Senate.

Would you not need some type of permit or certificate for this purpose if you were preempted on routes, rates and services?

Mr. BISSELL. Well, we would need to be able to still have a hearing to ascertain whether or not that carrier that wanted to operate within our States indeed was financially able to have—to provide a continuous and safe operation, that they had a safety program and a knowledge and expertise to operate on a safe basis and indeed had insurance to protect the public.

So, indeed, we would need to have that language expressly stated in this legislation, and it could not be tied to MCSAP because MCSAP doesn't do any of those things that I am talking about. They are roadside inspections.

What we do in our respective States, in most of our States, is have programs that transcend that dramatically. It has been necessary to do that because of increased unsafe operations that we have noticed through the years following interstate deregulation.

Now, you could argue forever about whether or not there is a tie to that, but indeed we certainly saw in Tennessee where we had an all-time high of accidents and injuries resulting from big truck crashes in 1987 and had to respond in a rather dramatic way.

Mr. RAHALL. You said you would conduct a hearing to determine such qualifications.

Mr. BISSELL. Yes.

Mr. RAHALL. But would you have to actually issue a permit or a certificate?

Mr. BISSELL. Not necessarily. You could simply say, you met the threshold or you haven't met the threshold. If a carrier in any way thought we were being arbitrary, then he could appeal our decision to the courts. We need to have this broad authority set out in this legislation.

Mr. RAHALL. I understand that.

Thank you.

I will recognize the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Bissell, to take off a little bit from the Chairman here, you stated when you first began that this 211 will eliminate a vast majority of your regulatory and authority powers.

Mr. BISSELL. Regulatory authority for what?

Mr. COLLINS. Powers. In your estimation, what authority would you retain under 211?

Mr. BISSELL. Well, I am not sure what we retain at all because our ability to address safety issues, which is absolutely critical to the safe operation of any vehicle on the roads within our States, is not expressly stated.

Now, it clearly would eliminate the State's authority to have a hearing to ascertain whether or not a carrier should be able to operate within our State based upon a showing of convenience and necessity. It would clearly eliminate our ability to set just and reasonable rates.

There would be significant competition within our State on rates and significant rate cutting that would occur. And I think other than that, we would definitely need to have a fitness criteria that we would address prior to any carrier's operation, but that is not set out in the legislation.

Mr. COLLINS. Is it not true, though, that in the legislation it has language that will retain safety, shall not restrict safety regulatory authority?

Mr. BISSELL. Well, it is my understanding in talking with the NARUC's general counsel, and I have only talked with him briefly, that it is an issue whether or not we would be able to do everything that we currently do within the discretion of the States, to implement programs that we think adequately protect the citizens of our respective States. So if you clearly stated that, that it is totally up to the discretion of the States as to what standards of safety and what safety programs would have to be complied with, then I think you have given us the safety jurisdiction we need.

Mr. COLLINS. Setting safety, entry, and tariffs aside—we concede those rights of authority, those powers of authority at your State level, just concede those.

Mr. BISSELL. Yes.

Mr. COLLINS. Do you think that your State legislature, based on the testimony of Mr. Kruesi, where he said that under the Constitution, States have the right to certain regulatory powers; and what I guess he was saying and he didn't fully agree was that your State legislature would have to actually enact legislation granting you authority that was not preempted under those things that you have conceded.

Mr. BISSELL. Of course, we have that authority now.

Mr. COLLINS. But you just stated that you felt like the fitness part of your authority would also be eliminated under this legislation.

Mr. BISSELL. Well, if you state in the legislation—I think that is probably a debatable issue with some people obviously, but I think if you set out in this legislation that you are not in any way restricting the ability of a State to set fitness requirements, including insurance, financial ability and safety programs, then that would certainly negate any kind of question about that in the future.

Mr. COLLINS. You are saying we need to clear that language up?

Mr. BISSELL. Absolutely. It has to be crystal clear.

Mr. COLLINS. Thank you.

One other thing, you mentioned this and it has been discussed about the difference in rates between intrastate and interstate.

Mr. BISSELL. Yes, sir.

Mr. COLLINS. And the fact that intrastate rates appear to be higher than interstate. Is that not true somewhat from the standpoint of drive time on a longer haul, versus drive time on a short haul, versus idle time on the two—difference in the two hauls?

Mr. BISSELL. I think so.

Mr. COLLINS. Versus back haul oftentimes through interstate, which is deregulated, versus the inability to back haul on intrastate, which is regulated.

Mr. BISSELL. Well, you can back haul intrastate if you have authority to operate within that area. You know, I am not sure I fully understand the back haul argument, because anybody that could go from one point to another within our State between points A and B can generally, not always, can generally go between B and A.

In other words, if you can do the first part of that haul, then you can do the second part of the haul, that haul, as a general rule, and there may be exceptions, but I am not intimately familiar with those in the State of Tennessee.

Mr. COLLINS. That is if the commodity is available. But if your commodity is not available, under the authority that you have, you would not have access to a back haul unless you did it under some other authority.

Mr. BISSELL. That is correct, yes, sir.

Mr. COLLINS. Thank you, sir.

Mr. BISSELL. Thank you, sir.

Mr. RAHALL. The distinguished chairman of our full committee, Mr. Mineta.

The CHAIR. Thank you very much, Mr. Chairman.

I can understand the concerns that State regulatory commissioners would have, but it seems to me that if we are only going to be dealing in the area of routes, rates and services and you would still be in the position of having to do the safety, having to do the—let's say the insurance requirements and this kind of function, that you would be performing as you do now, where would be the—or what would be the concern of the regulatory commissioners?

Mr. BISSELL. Well, I think with our economic regulation, we are able to utilize that regulatory authority to assure that carriers that operate within our State have the safety wherewithal to operate in

a way that is consistent with the public welfare. We would have the ability, through the economic regulation, to do all the things related to insurance and financial ability.

We would be able to say, if you don't meet these standards, we will cancel your operating authority within the States. I think the heavy hand of economic regulation has been material in assisting us in keeping our highways as safe as they are.

Now, I am not saying that that can't be done if you can clearly—continue to be done if you can clearly set out in this legislation that we have authority to exercise total discretion on safety, that we will be able to cancel any carrier's operating authority that does not meet our safety financial responsibility and insurance standards.

The CHAIR. Well, it seems to me, having been here when we deregulated the airline industry, and I know those kinds of concerns were also brought up about safety, but I think today we do have an airline industry that is considered to be safe. We deregulated the economic regulation of the airline industry, but we did not deregulate safety.

I mean, that was a theme that was—that was our beat, I guess you might say, and so I am not sure that that would be any different in this instance where safety is still paramount. It is paramount for the regulatory bodies, it is paramount for Congress. I think it is paramount for the trucking industry as well. They are concerned about safety.

So I think it is something that gets raised, but it is something I think that we have already seen that—where it really doesn't become an issue. I mean, we heard Secretary Kruesi, I think, testify here that in his view, we would be in a position to preempt the States as it relates to economic regulation without limiting the State's abilities to regulate the safety, fitness, the adequacy of insurance and other kinds of issues. And I guess that is the real distinction I am trying to make in this discussion.

Mr. BISSELL. If I may respond, sir, let me say this. When we deregulated interstate commerce in 1980, when Congress deregulated interstate trucking, economic regulation, before that time, trucking companies had bankruptcy rates that were comparable to other industries in this country. Within a short period of time, 10 years or less, those bankruptcy rates went up to a level of something like 87 percent of the average, or exceeded the average by that much.

The CHAIR. But wasn't that because maybe—I am sorry. Go ahead.

Mr. BISSELL. Well, what I think it was, was that anybody who could get—who wanted to be a trucker could be a trucker. He could borrow or lease or buy a truck and operate in a deregulated environment, and many times they did not understand the consequences of the long-term cost of trucking. They did not fully cover their costs.

They drove out the reputable carriers that were complying with safety regulations and other things by depressing the rates so dramatically. And in the State of Tennessee, I could tell you that one of the first things that falls by the wayside when you have a carrier that starts operating in the red is that safety program. They fire the safety director or they lay off people that are focusing within

their company on safety, and that is what I fear would happen in intrastate commerce.

The CHAIR. But I wonder if that isn't really sort of a management syndrome, where they say, wow, I am deregulated, so this is my niche market. Now I am going to do this. And all of a sudden, that carrier is having financial difficulties. And so yes, bankruptcy rates went up, other things happened.

But I have been on a safety basis and I don't have any figures before me right now, but I have been on a safety basis, the accident rate, the death rate, whatever you want to do, measure in terms of 100 million miles of revenue projections, ton mile, whatever, I bet it didn't really go up at the same rate or even near the same rate as the bankruptcy rates of those times.

To me, that would just mean that it was really a management function and policy-making function within those trucking—within the trucking industry and within the trucking companies, rather than saying, see, look, safety went by the boards as we deregulated the trucking business.

It seems to me that what we have seen now in the trucking industry—where we have deregulated on the Federal basis, what we have seen on a deregulated basis on the airline industry, that I would match today's safety report of any of the modes of transportation with what they were prior to regulation.

I am just making that as a statement without being able to point, sir, to a figure or a chart, but I would just sort of make that as an assertion thinking that, I think I am on pretty safe ground today to be able to make that kind of an assertion.

Mr. BISSELL. I think that is an appropriate conclusion. Because the figures that I have are that over the past 10, 15 years in trucking, the total number of deaths attributable to big truck crashes has hovered at around 5,000 people. And there has been, of course, an increase in the amount of transportation, and there has been safer highways. Most of this transportation today is over interstate highways, which is a lot safer.

But what—the reason that we have been able to hold the line is not because deregulation does not cause carriers to become engaged in cut-throat rate competition that deteriorates the standard of safety as a natural happening within the trucking industry, that requires a very small amount of investment, but it has been that we initiated—Congress initiated the MCSAP program, or intensified Federal–State program in 1984, and States like Tennessee went far beyond MCSAP with a drug enforcement program, including drug dogs, 140 inspectors, rather than 35, when I think I came on board, or 40, when I replaced Bob Clement on the Public Service Commission in Tennessee.

So we have responded to maintain the safety level as it is and we have done so successfully. We should be very proud of that.

But we have to understand that once you deregulate within our States, intrastate commerce, we are going to be hit by that same inevitable consequence, and we are going to have to have the wherewithal to deal with that and we are going to have to respond dramatically, as we did in the State of Tennessee. And I hope most States are able to do that.

And I hope you recognize that you are going to have to clearly set out our authority and not limit it in any way, our ability.

The CHAIR. You just made the point, because what you have said is that the States came back, the Federal Government came back with a MCSAP, and that had to do with safety law. It had nothing to do with economic regulation, and that is why I am saying, economic regulation is one thing, but what you did, what the Federal Government did in MCSAP did the safety part of it, and I think even as—in statements by Mr. Oberstar, level playing field in terms of economic regulation, but they also want to make sure that the safety portion is not denigrated.

And as I looked through the statement of the American Trucking Association, preserve the ability of the States to maintain beneficial regulatory protection, such as uniform liability rules, antitrust immunity, financial fitness, on down the line, but in terms of safety, they want to make sure that safety is paramount.

And I think that is the name of the game; emphasize safety in terms of safety laws for a carrier, but you don't regulate safety through economic regulation.

I think Mr. Collins is our colleague here who was in the trucking business, and I think that was the kind of thing he was trying to say a little while ago; that you do that by separating economic regulation on this side as it relates to rates and routes, and over here you deal with safety in its own vein, and I think that is what we are going to try and do.

Again, thank you very, very much, Commissioner, for your statement and for your representation of NARUC. And, again, thank you very, very much.

Thank you, Mr. Chairman.

Mr. RAHALL. Thank you, Mr. Chairman.

The gentleman from Tennessee, Mr. Clement.

Mr. CLEMENT. Commissioner Bissell, great to have you here.

Mr. BISSELL. Thank you.

Mr. CLEMENT. We have worked on a number of issues together in a very professional manner. I think you can have a difference of opinion and not have a difference of principle, too. But I also know that I made many speeches over the years and some of my speeches are with the title "Times are Changing" and I think that is what we are talking about today, times are changing.

And I feel like you do, Commissioner Bissell, when it comes to safety and fitness and insurance responsibilities, it has got to stay with the States and that needs to be very clear.

But when it comes to economic deregulation, maybe this is the time to look in a different direction. You know, you had the opportunity to hear Secretary Kruesi testify a while ago, Assistant Secretary for Transportation Policy, and he was commenting about the Motor Carrier Act of 1980 and about the fine piece of legislation that was crafted by this committee. And as a result of this act, almost 40,000 new carriers have entered the industry and made rate levels much more competitive, and also, all the facts seem to lead us that it would be a savings for the consumer, as much as $6 billion on an annual basis if this happens.

Do you have anything to refute this?

Mr. BISSELL. Yes, I do, and I will submit that as an amendment to my testimony, Congressman, if I can.

The National Regulatory Research Institute evaluated, in conjunction with the NARUC, NRRI out of Ohio State, that is our research arm, the most often referred to study, and I can't remember which one it was right now, but they really shot a lot of holes in that study. And it is our position, and perhaps reflected in my testimony, I don't recall, my extended testimony that I submitted, that many of these so-called studies are simply projections on the part of those people who authored them or propose them as being factual.

Now, there could be certainly some savings that could accrue in efficiencies, but indeed I would like to submit an amendment to my testimony that would address this specifically.

Mr. CLEMENT. If agreeable to the Chairman of the committee, I would like, Chairman Rahall, for that testimony, those remarks to be incorporated into the record.

Mr. RAHALL. Okay.

[The following was received from Mr. Bissell:]

While there would inevitably be some cost savings associated with the elimination of economic regulation, studies which identify the cost savings in the neighborhood of $2.9 to $6 billion annually have usually inflated the figure to get public attention and support. I have attached for inclusion in the Record, a letter from NARUC's research arm, the National Regulatory Research Institute (NRRI), which discuss the methodologies used in the 1990 Department of Transportation (DoT) study entitled "The Impact of State Economic Regulation of Motor Carriage on Intrastate and Interstate Commerce". Rather than restating the specific findings included in these letters, I will say that DoT study's methodologies are flawed and these flaws result in an overstatement of the cost savings associated with economic deregulation. In general, the study's flaws include; imperfect comparisons, dismissal of oversight costs, and undue emphasis is given to some statistics and not others.

The National Regulatory Research Institute

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March 18, 1991

The Honorable Thomas P. Harwood, Jr.
Commissioner
Virginia State Corporation Commission
Jefferson Building
P. O. Box 1197
Richmond, Virginia 23209

Dear Tommy:

Your letter of February 5, 1991 asked if we could "take a look at" the methodologies used in the May 1990 DOT Final Report on motor carriage. In my reply of February 19th I said we could make some critique and commentary for you, but suggested that you might want to engage others as well who are closer to it. Enclosed is our assessment--a memorandum from Bill Pollard, one of our senior staff economists, to me.

In addition to Bill Pollard's analysis there are a number of scattered observations that come to mind for me in scanning the report.

- chapter 2 in reviewing the history of motor carrier regulation, falls into the trap of comparing imperfect commission regulation with idealized perfectly functioning markets. Of course, the only fair comparisons are either imperfect regulation with imperfect markets or perfect regulation with perfect markets.

- market solutions are presumed to involve few oversight costs, though this surely hasn't been true in banking, securities, natural gas, and telecommunications deregulation.

- while necessary to the analysis, the problem of isolating "different regulatory schemes" as the single variable on which the outcome is dependent is a formidable one. Simplification may come at the price of necessary accuracy.

- the consistent meme is that "the 42 states that still maintain some form of . . . economic regulation" are misguided at best and that at least 20 of these are injuring their shipping public and those of the other states with no redeeming features to the stricter regulation. Such a conclusion is somewhat counterintuitive and in all events denies the "states as laboratories" theory of dual regulation.

- the finding that nearly half of the 37 states analyzed (17) did not have higher interstate rates than intrastate rates would seem to be more notable than the study suggests. And the explanation that "This may be because the latter (17) states practice liberal regulation or use the regulatory process to hold rates down (emphasis added)" would seem to acknowledge that both a market solution and a regulatory one could reach the same result.

- some acknowledgement should be given to "the other side" of the trucking industry, and that is the undue effect that monopsony or near-monopsony shippers can have on freight rates and ultimately trucking company survival. One gathers that in the case of truck load lots anyway (not the subject of this study) much traffic moves under deeply discounted rates that often might fail the traditional test of not being unduly discriminatory.

- the argument that business will gravitate toward states that have deregulated trucking is probably generally overstated in the same way that "favorable tax treatment" is supposed to be determinative in industrial location decisions. Freight rates would have to be a major portion of total operating costs; they might occasionally be a factor at the margin, but in any event would seem to only apply in this context if most of the traffic of the firm is intrastate in character.

- the "public interest theory" of regulation is dismissed, and the (largely discredited) "capture theory" is assumed to be true and (strangely) incorporated into "a composite theory of regulation."

- contestability theory seems to be believed in by the authors, though a not insignificant part of the economics profession doesn't.

- there seems to be the implication that antitrust can be relied upon as a workable alternative to current regulation.

- if the analysis is correct in estimating a $611 million burden that the non-deregulated states are annually placing on the deregulated ones, two comments are (1) an average of $20 million per state is a rather small number, and (2) that "burden on interstate commerce," as it is phrased in the last line of the Executive Summary, would probably not be enough to allow federal preemptive regulation of this intrastate commerce under the 1923 decision in North Carolina vs. United States treating unjustly discriminatory inequalities. While federal use of the interstate commerce clause has few limits, one of them is, I believe, that the mere existence of inequality is not necessarily proof of an undue burden which would allow federal supremacy to be invoked. And, of course, if the Pollard analysis is closer to the welfare losses experienced, the case for federal preemption (at least on these grounds) would be still less persuasive.

We hope this adds to discussion of the matter. As you know, the usual disclaimer applies--these are merely two sets of comments by two economists here.

Best regards,

Douglas N. Jones
Director and Professor
of Regulatory Economics

jls

c: The Honorable Claude M. Ligon, Maryland
Chair, NARUC Committee on Transportation

William S. Fulcher, Virginia
Chair, NARUC Staff Subcommittee on Transportation

Mr. CLEMENT. Let's assume the United States Congress takes action this year, and let's assume that we do one of two things: Either we go along with what the Senate has done on Section 211 of Senate Bill 1491, or we totally deregulate.

What is the position of NARUC?

And I am pleased that you are the national president this year, which is a great honor.

What would be the position of NARUC on which option to follow?

Mr. BISSELL. Well, I am not sure that I totally understand what we are doing in the section that is being addressed in this legislation that you are considering, Section 211 versus total deregulation. I think what you are talking about, and correct me, Congressman, if I am incorrect, that 211 refers to carriers that have some connection with air transportation?

Mr. CLEMENT. That is correct.

Mr. BISSELL. And that total deregulation would deregulate every carrier, so that anybody who wanted to operate any kind of trucking company could operate?

Mr. CLEMENT. That is correct.

Mr. BISSELL. I guess—

Mr. CLEMENT. With the understanding that certain responsibilities remain with the State, as mentioned earlier.

Mr. BISSELL. Right. No, I think, Congressman, that I—here again, I am going to ask if I might prepare a more detailed response as an amendment to my testimony. Because, on the one hand, I correlate without a doubt the—a connection between economic regulation and our ability to control the quality of that carrier that ever gets into business in the State of Tennessee and in the other States across the country.

So I think there is a correlation in my mind between economic regulation and the ability to compel carriers to operate safely within the States. So as little economic regulation, on the one hand, if I look at it in that vein, we have, the better.

On the other hand, I certainly don't want to create an unlevel playing field where some carriers have to submit themselves to regulation and other carriers do not. I think, for example, in the Section 211, one important exception that I have heard that is contemplated by the Senate is that household-goods carriers would not be covered by that legislation. Are you talking about, when you say total deregulation, household-goods carrier?

Mr. CLEMENT. I am talking about the trucking industry.

Mr. BISSELL. In general, yes.

On the one hand, that might be a very positive thing to do because it creates a totally level playing field. But I would have to confer with my colleagues to answer that—

Mr. CLEMENT. But listening to your testimony and statements, it appears to me that you are more concerned to make sure that the States continue to have authority over safety and fitness and insurance responsibility.

Mr. BISSELL. I am, sir, absolutely. Without a question. Clearly stated in any legislation, too, without restrictions.

Mr. CLEMENT. All right.

Thank you.

Mr. RAHALL. The gentleman from Illinois, Mr. Costello.

Mr. COSTELLO. I have no questions.

Mr. RAHALL. The gentleman from Illinois, Mr. Lipinski.

The gentleman from Illinois, Mr. Poshard.

Mr. POSHARD. Thank you, Mr. Chairman.

Mr. Bissell, I wanted to ask you some questions about Section 211, and I understand that from your comments to Congressman Clement that you might want to submit the answers in writing. I wanted to share with you the views of one of your counterparts, Mr. Tom Meyers, who is manager of the Transportation Division of the Illinois Commerce Commission with respect to the 211 section.

He indicates in his letter to me that he feels that this unwisely deregulates intrastate trucking when a minor legislative adjustment is, at most, all that is needed to correct the Federal Express' judicially mandated advantage over UPS, which is what the California decision was all about.

And I wanted to know whether you agreed or disagreed with him with respect to that statement, whether or not we should confine ourselves to evening the playing field between those two large carriers as opposed to going as far as the Senate did in enacting Section 211 which essentially would be, as I understand at least, a total deregulation for all intents and purposes.

The second comment that he made in his letter was that he didn't feel that the States had much——

Mr. BISSELL. I am listening.

Mr. POSHARD. Shall I go on?

Mr. BISSELL. Yes, sir, I am listening.

Mr. POSHARD. Okay. That he did not feel that the States had sufficient input into this process at this point in time, that this was done here, at the Federal level, and at this point in time, at least by the Senate, there were not hearings held out in the respective States for folks like yourself to have input into this decision.

And I want to know whether you feel like you have had sufficient opportunity to give input into this particular decision that we are about to hand down to the individual States?

But thirdly, and most importantly in my mind is a concern that he expresses where he says ethically, "This Section 211 encourages and nearly compels State-licensed motor carriers to misrepresent their operations to qualify for a Federally sponsored exemption to State law." And he goes on to explain this in some detail.

He says the Senate version in another sense, is a legal nightmare, in that it includes in the definition of an exempt, quote, "intermodal all-cargo air carrier," end quote, the concept of an indirect cargo air carrier. An air freight forwarder is defined in Federal regulations as an indirect air carrier, but freight forwarders were deregulated in 1986.

Since anyone can assert that he is an air freight forwarder, presumably, this makes Section 211 a total deregulation bill. Add to this the idea that a motor carrier which sends 15,000 letters by air per year is also exempt, effectively creates loopholes that anyone can use to escape State jurisdiction. Once some carriers use these loopholes to gain a competitive advantage, others will have to use the same provisions for defensive reasons.

This will effectively deconstruct 42 programs which State legislatures have supported for many decades. The President of a major

Illinois carrier who opposes this bill or this section told me that he would arrange to mail 15,000 envelopes per year by an air cargo carrier to qualify for the exemption even though he knew that would be a preposterous waste of money and resources.

Subsequently, he discovered that another provision of the bill would allow him to secure his competitive advantage by calling himself an "air freight forwarder" even though he does no freight forwarding.

Mr. POSHARD. So are we, in effect, forcing honest people to behave dishonestly by misrepresenting their business operations to avoid State law if this Section 211 passed?

Mr. BISSELL. First of all, on Section 211, what you would have to do to correct the inequity between United Parcel Service and Federal Express is simply address that issue singularly and not address the broader concept of deregulation as you have in 211. We don't have a dog in that fight. We are not concerned about UPS and Federal Express. That is something that the Congress is addressing.

Whether you should or whether it would be our recommendation as to whether or not you limit it to that, I think that we probably would say we would prefer that because on the second point that you mentioned we don't think that we have had adequate time to have input and study, preparation of testimony and accumulation of statistics and facts to present to you.

As I indicated in my previous testimony, we have a task force right now that is working with the Interstate Commerce Commission that would bring to the Congress next year a proposal for deregulation and probably what that would be in my judgment is—are more relaxed economic regulations, some sort of reciprocal thing between States where in Tennessee we would follow the model suggested deregulation bill that would permit carriers that operate in States that are deregulated, which permit our carriers to operate in those States, to do so, but States still prohibit carriers which still have economic regulation would not—their carriers would not be able to operate in those States. So I think we would approach in it that way and not all States would do that.

I have to be candid with you. If you are looking for total economic deregulation, you probably aren't going to find that happening real soon within the States, but I think as a result of this task force that we would probably come with a proposal that would bring about a more rapid evolution to deregulation on a reciprocal basis as I explained.

Finally, do I think that we have had adequate input into this process? No, I don't. I think that a more studied approach to it where you would have a bill that addressed economic deregulation on a uniform basis across the country would be the way that we would suggest that you go in the future.

Mr. POSHARD. Thank you. If you could respond in writing, at least once you have had a chance to look at that more comprehensively, if you think there is a reason here to believe that honest people might misrepresent their business just to qualify for this exemption or for this loophole, I would appreciate it.

Thank you.

Mr. BISSELL. Certainly.

[The following was received from Mr. Bissell:]

As included in my written statement I have been told that an argument has been offered by the American Trucking Association (ATA) that, under the definition of "Intermodal all-cargo air carrier," any motor carrier of property would qualify for the exemption by claiming to be an air freight forwarder.

Notwithstanding that simply claiming to be an air freight forwarder does not make one an indirect cargo air carrier, the fact that the ATA has raised this issue would indicate that litigation could be anticipated concerning the interpretation of this part of the bill. Such litigation would be expected to be a lengthy process with no assurances that the courts would agree with the states.

Furthermore, in the bill's second definition, an Intermodal all-cargo air carrier is also open to interpretation and with a liberal interpretation of this definition it seems that for $4,350 per year, a carrier could send 15,000 letters to unknown individuals in California and satisfy the literal meaning of the definition of an Intermodal all-cargo air carrier.

If the cost of intrastate regulation are as high as some claim, there is certainly the incentive to take advantage of such poorly defined terms in this legislation to escape such regulation. NARUC's concern here is that if Congress intends to deregulate the industry, it be clear in its intent. Simply allowing deregulation to happen through the use of loopholes in the law is unwise and can be avoided.

Mr. RAHALL. The gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. No questions.

Mr. RAHALL. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. No questions.

Mr. RAHALL. Commissioner, I guess that exhausts our questions for you. Thank you for being with us.

Mr. BISSELL. Thank you very much.

Mr. RAHALL. The subcommittee will now hear from Mario Perrucci, International Vice President, International Brotherhood of Teamsters, Washington, DC.

Mr. Perrucci, we welcome you to the subcommittee. We understand you will be submitting Mr. Carey's testimony, is that correct?

TESTIMONY OF MARIO PERRUCCI, VICE PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY MARC FINK, COUNSEL, LEGISLATIVE MATTERS

Mr. PERRUCCI. Yes, sir, I want to thank you, Mr. Chairman, and also Chairman Mineta for giving us an opportunity to address the committee, something that we were not afforded on the Senate side which certainly concerned us. To my right is our Counsel for Legislative Matters, Mr. Marc Fink who will certainly assist me in any questions perhaps I cannot give you the answer on.

I have to ask myself before I start—and I would ask you if I could read my statement into the record that I understand you do have a copy of. But I have to ask myself what is the rush here? Why are we moving on something that is involved with the airport improvement bill? The way it was done in the Senate, it is at best patchwork.

I have heard the concerns of the Commissioner today. Although he supported it, there are many, many answers and things that must be certainly investigated. And if the airport improvement bill certainly is important, then that should go without 211 as a tail on the kite to further deregulation.

I hear a lot about this level playing field. I am a little confused about a level playing field. Who are we leveling the playing field for? And organized labor, particularly the Teamsters, have a concern about that. Are we leveling the playing field for all trucking

companies? Or are we leveling the playing field for those who already control the field and want the field clear of any competition, less the giants so they then would slug it out.

United Parcel Service is a global company, as is FedEx. Both of them, and I know for sure UPS, were in Vietnam and the ink wasn't even dry on the relations paper before they were there.

I would suspect if the moon was colonized tomorrow, they would be there on Friday. And they are a successful company and they are a Teamster company.

However, we have concerns and let's look at Federal Express and what if, in fact, 211 goes through what will happen?

UPS and other trucking companies are under the National Labor Relations Act, Federal Express is under the Railway Labor Act. Are you now creating FedEx, that is an airline, to a trucking company? Are you now allowing UPS, as they are trying to do in court right now, to run from our collective bargaining agreement and walk away from the National Labor Relations Act and now say we, too, are an airline.

We, too, should be out from underneath the National Labor Relations Act and, in fact, come under the Railway Labor Act, which makes it much easier to decertify from our contract. So these are concerns that we have and we would hope that this committee would look into those.

Good afternoon, Mr. Chairman and Members of the subcommittee. I am Mario Perrucci, International Vice President of the 1.4 million member Teamster Union and Director of the Teamsters Parcel and Small Package Division, and I must say that our General President Ron Carey certainly wanted to be here, but very important union matters mandated that he leave town to take care of those.

I am pleased to have this opportunity to testify on behalf of the more than half-a-million Teamsters who work in the transportation industry and the rest of our members who, like every other American, are affected by the laws and regulations that govern surface transportation policy.

We represent over 160,000 UPS employees. Another 60,000 Teamster members work for the "big three", less-than-truckload, LTL carriers: Roadway, Consolidated Freightways and Yellow Freight. These are the most powerful companies in the industry and the ones whose management will benefit most from Section 211 along with nonunion companies like FedEx and overnight. We also represent thousands of workers at smaller trucking companies whose companies stand to lose the most from passage of 211.

Trucking laws and regulations affect the price we pay for goods and services, the availability of good paying jobs and the general health of our economy and the safety of our families on our Nation's highways. It is critical that any change to these laws be thoroughly researched and debated to ensure the interests of all Americans are served.

The Teamsters strongly oppose Section 211. It is a patchwork transportation policy which will benefit management at a few powerful companies but will have serious consequences for the American people.

We must not make national transportation policy through back room deals and amendments hidden in little known pieces of legislation. Instead, we need a complete review of the impact of transportation regulations and policies that have been in place the last 15 years.

We need a new set of progressive policies that meet the needs of everyone affected by surface transportation, workers, carriers, shippers and the American people. The Teamsters are committed to working with Congress to achieve this goal.

One road we might follow is contained in a recent study by Cornell University researcher Dr. Michael Belzer.

Dr. Belzer's study provides a comprehensive review of the impact of trucking deregulation in the 1980s and also provides insightful recommendations that can take our transportation policies into the 21st Century.

We have provided a copy of this study to the committee for your review and would like the study inserted in the record as part of my testimony. But allow me to quickly summarize some of his recommendations.

Dr. Belzer recommends that any new regulatory framework should minimize the burdens on all trucking companies while improving conditions for the millions of Americans who work in this industry. This would include actions to protect the wages and employment security of the work force, modernizing hours of service rules to maximize safety for truck drivers and the public and strengthening collective bargaining in the industry.

These steps would help strengthen the entire American transportation system, instead of consolidating the power and wealth of management and stockholders of a few large companies the way Section 211 will.

There will be few winners and many losers in the freight industry if Section 211 passes.

That reminds me of when I served with 101st Airborne Division during the Vietnam conflict when they told us we sacrifice a few to save many. Well, I believe in this case you are going to sacrifice many to benefit a few and I would look very closely at 211 on what the impact will have on the small trucking company.

The top layer of management and stockholders at the largest companies will benefit. But compare that tiny group of alleged winners with those who could lose with the passage of Section 211.

There is absolutely no evidence to show that American consumers will benefit from a plan like Section 211. Earlier deregulation has not produced any direct benefits or lower costs to the public. Employees at the companies supporting Section 211 could also be losers. If 211 passes, these companies will be able to further monopolize the market and use this increased power to put downward pressure on their workers' wages and working conditions under the guise of dealing with cut throat competition that they themselves have established by clearing the playing field of everybody but the big guy.

Their coordinated pressure against decent wages would affect hundreds of thousands of workers and their families and threaten their ability to be productive taxpaying members of the community. Highway safety could also be a loser under 211. The pressure from

these transportation giants could force responsible small and mid-size companies off the road opening the door to less responsible operators.

The past 15 years of experience has shown that some operators sacrifice safety to cut costs by poorly maintaining their vehicles, forcing their drivers to work long hours and demanding that their drivers carry overweight and dangerous loads. Whenever companies have won deregulation in the past, as we can see from the freight and airline industry examples, the workers in those industries and the public have taken it on the chin.

In freight, real wages have gone down. More than 150,000 jobs with decent wages and benefits have been lost. Hundreds of companies closed while low wage/low benefit companies expanded. The losses in wages to workers and taxes to our communities is estimated in the billions of dollars. That is the legacy of earlier deregulation. That could be the legacy of Section 211.

Ladies and gentlemen, 211 is bad for America. Instead of being part of a comprehensive transportation policy assessment, it is a patchwork policy delivered to you by a small number of wealthy corporate managers and shareholders who are the only ones who will benefit from it. Section 211 will produce losses across the country whether it is unsafe highways, small companies forced out of business by giant monopolies or workers facing downward pressure on their wages and working conditions.

The Teamsters want to work with you and your colleagues in the House and the Senate to develop a new transportation policy for our country. We urge you to reject 211 and instead move forward with a comprehensive plan for our transportation system for the 1990s and the next century.

Between 1978 and 1990, trucking employees' annual wages declined an average of $6,700 or 27 percent in real terms adjusted for inflation. Union workers fared better than nonunion workers but still even the highest paid representative workers saw wages decline in real terms during the last 15 years.

More than 80 percent of gain from economic deregulation was a transfer of wealth from workers to shippers, especially big retail companies who mostly pocketed these savings. There is no solid evidence, to our knowledge, that consumers have benefited from transportation deregulation in the form of lower prices of delivered goods. All Congress did was take money out of the pockets of thousands of freight industry workers and put the money into the pocket of a few managers and shareholders of retailers.

Deregulation has not resulted in increased competition. While thousands of small freight and parcel companies have come into existence since deregulation, they exert minimal pressure on large companies pricing since small companies cannot serve large shippers. The labor market pressure is quite different.

Low wages, no benefits, no hospitalization, no pensions, undermine the standards set in collective bargaining agreements. Contrary to the argument of increased competition, large freight companies have become much more concentrated since deregulation.

The big three less-than-truckload companies—Roadway, Yellow, and Consolidated—and UPS command over 50 percent of class one freight revenue, an increase of nearly 100 percent since 1978.

Teamsters have lost close to 200,000 freight members since 1978, from 320,000 to 120,000 existing today. These members worked in scores of freight companies that went bankrupt under the weight of deregulation.

IBT research has shown that barely 25 percent of these displaced workers ever find comparable jobs with comparable wages and benefits. At the same time, UPS did expand adding 65,000 jobs from 1984 to the present. Part-time employees accounted for most of this growth, growing 73 percent over the last 10 years.

So members of the committee, Mr. Chairman, I don't see where a level playing field—it seems like UPS, and we hope they continue to be successful, has been done pretty good. I can remember, I was a package driver to United Parcel Service for 12 years. In 1966, I think they were in 12 States, 14 States, I am not sure. Under regulation and then partially deregulation, they have done pretty well. They have done pretty well, as has FedEx who hides under the Railway Labor Act, who some day we hope we will get our hands on and it is just another situation of them continuing to try to do something and it doesn't benefit the American people particularly the small trucking company and our members.

Thank you.

Mr. RAHALL. Thank you very much, Mr. Perrucci, for your well thought-out and presented testimony. I don't know whether you were here during the opening statements or not, but I spoke about the effects of deregulation on safety, and I pretty well stated that all along I have been no fan of further deregulation efforts.

Others of my colleagues, Chairman Mineta and many of us on this subcommittee, have expressed our concerns throughout today's proceedings about the effects of Section 211 on safety. It has been a pretty major emphasis.

You know, I can recall airline deregulation—and I have said this before this subcommittee and the full committee on numerous occasions—when we had the airline deregulation battles before this very committee, we were told that it would benefit the economy, that it would not cause loss of service, loss of jobs, et cetera. But I find very few in my area of rural West Virginia today who would be fans of airline deregulation, or who can point to many instances where airline service to rural communities has improved and/or the price of ticketing has come down. Such has not been the case.

Similarly, when busing was deregulated, I recall having top officials from both Trailways and Greyhound Bus Lines in my office just prior to Congress passing busing deregulation. Assurances were given that service would not be cut out to rural parts of my area in West Virginia. Shortly after we deregulated, they were the first to go down before the ICC and file for discontinuance of service to my area. And I can see much of the same thing going on again here when we talk about trucking deregulation.

But I am also a realist and I think we can see the writing on the wall, so to speak, much as we saw what was going to happen in those days, which was that the vehicles were already rolling through the halls of Congress. The fact is that section 211 has passed the United States Senate and it is before us at this point. Given that scenario, and regardless of where we are on further deregulation efforts, would you and the Teamsters be in favor of this

bill if that vehicle was once again rolling so loudly and so full of steam that we must at least make an attempt to level the playing field by including the deregulation of all motor carriers in such a vehicle?

Mr. PERRUCCI. No, we would not. If I understand the statement, it would be to totally deregulate the industry?

Mr. RAHALL. Yes.

Mr. PERRUCCI. No. I think what has transpired over the last 14 years——

Mr. RAHALL. In order to treat all motor carriers equally.

Mr. PERRUCCI. Well, it depends on treating them all equally. If we are saying totally deregulate and let everything go as they want, and I know the safety aspect has been bantered around quite a bit here, the concerns and rightfully so, but if there is no regulation, economically or whatever, I don't know how the small unionized or even nonunionized carriers, a responsible carrier can compete with the big guy coming in.

And on the other hand, if you have the home-run baker company that comes up and has tires that are flapping in the breeze and literally you may think I am being facetious and that is true, but I do not believe, quite frankly, that law enforcement by itself can regulate safety. I think it has got to be a combined situation of safety regulation within the State and law enforcement.

Setting up roadblocks every so often, particularly when you are talking about entrusting, is not always going to get it done. Okay. I don't know how many small towns that you go in that you are going to put roadblocks up to check for safety and/or inspection and there are many phrases you can use.

We know about trucking companies that use what we categorize as "zippo" plates. They put them on this truck today and take it off and put it on that truck that is not registered and then they put it on that one.

So I think the committee certainly takes a responsible—I think just allowing and saying that the catch-all is law enforcement, as I heard the commissioner, can certainly regulate safety is very foolhardy. I think it takes a combination of both to make sure the companies that we have under contract—and again I am not here UPS bashing. I will praise them, and their safety record is phenomenal, but because their safety is—because they adhere to the laws, they want to make sure that their equipment is in working order and I would suspect other companies do, too, the Roadways and the CFs and the Yellows and the small trucking company. But letting it just be "John Law", I don't think is going to get it done.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Further expanding on the safety inspections, does the Department of Transportation not come out and inspect themselves on the job site on facilities owned by trucking companies as well as roadside inspections?

Mr. PERRUCCI. Does DOT come out? I am not quite sure if DOT comes out and does spot checking. I would suspect perhaps they do. But I would also suspect if you don't know that trucking company is there, you can't inspect something if you don't know it is there. But I certainly would—your knowledge?

Mr. FINK. I believe that DOT does make an effort to do spot inspections, but I think DOT would admit to you that it does not have the manpower to do adequate safety inspections for the thousands and thousands of small and very immediate—the very large and immediate increase in trucking companies that have come about in the last 10 or 12 years. They simply are unable to inspect the 40,000 or 50,000 entrants into the industry.

Mr. COLLINS. The point was made, though, they do have—they do come and do inspections.

Mr. PERRUCCI. Yes, yes they do.

Mr. COLLINS. What percentage of the drivers of this 160,000 made up of UPS drivers?

Mr. PERRUCCI. I would suspect, I believe, I am sure they can answer this much better, but I would think out of 160, it is probably 70—50,000 to 60,000 package drivers, I would believe.

Mr. COLLINS. Based on the total number of UPS employees today, then, you are probably—well, the drivers you are looking then at better than 200,000 total drivers for UPS. How many or do you have any idea what the number was prior to deregulation? You say they have done pretty well since then?

Mr. PERRUCCI. They have done fantastic. Prior to deregulation.

Mr. COLLINS. Prior to deregulation?

Mr. PERRUCCI. I couldn't give you that figure off—I would just be guessing what their—the amount of employees they had prior to deregulation.

Mr. COLLINS. You mentioned, though, they have done pretty well under deregulation. Does that mean they have actually increased those numbers?

Mr. PERRUCCI. Well, Congressman, what I said—I think what I said was they are still partially regulated and they have done very well either—any way that you slice it, whether they are working under how they are regulated now intrastate, and that is why I don't understand the level playing field situation, but they have done very well, yes they have. And I think it is not because of deregulation, because they have done well even when they were regulated in the 1960s and 1970s, their growth period, if you will, and I am sure they will testify. They had tremendous expansion in the late 1960s and a decade of the 1970s and then on into the 1980s, but what they do is like any good company does, it is the third word in their name: service.

Mr. COLLINS. Through your bargaining efforts, though, has the employee done well, also?

Mr. PERRUCCI. The employees, yes, we have negotiated, I think, fair contracts.

Mr. COLLINS. You negotiate based a lot on profits?

Mr. PERRUCCI. Of course.

Mr. COLLINS. Is that a determination in whether or not you seek certain benefits, certain wages?

Mr. PERRUCCI. Absolutely.

Mr. COLLINS. So the fact of whether it was through deregulation or just good business management during the period of time that they have been deregulated, you have done well, too, whether we say it was deregulation or whether it was just good business practice.

Mr. PERRUCCI. It is also part of—you are missing one factor in there, too, which is cooperation and understanding from the union, also, of their needs during the last, particularly, two decades.

Mr. COLLINS. Well, that is good, that is a good point. Let's say it was due to deregulation, then could we not enhance other companies, not probably not on the scale of UPS, but maybe on a comparable scale based on size or smaller size?

Mr. PERRUCCI. No, I do not.

Mr. COLLINS. Would further deregulation help as long as we maintain clear language dealing with safety and fitness?

Mr. PERRUCCI. No, I do not. I will give you an example of my State which I am from, New Jersey, I believe is deregulated. And UPS, Big Brown, rolled across that thing like a cyclone and many small companies, Parcel Delivery Service, Retail Delivery Service, Eastern Delivery Service, they are not there anymore because they couldn't compete.

Mr. COLLINS. Were those union companies, also?

Mr. PERRUCCI. Yes, they were. Yes, sir.

Mr. COLLINS. That is all I have, Mr. Chairman. Thank you.

Mr. RAHALL. The Chair recognizes the distinguished Chairman of the full committee, Mr. Mineta.

Mr. MINETA. Thank you very much, Mr. Chairman.

Let me thank Mr. Perrucci and Mr. Fink for being here and testifying before us today.

Mr. Perrucci, on page three of your statement, you say that more than 150,000 jobs with decent wages and benefits have been lost. Going to statement by Secretary Kruesi earlier, they are talking about total employment in the trucking services industry has increased by over 500,000 since 1979, even after taking into account job losses resulting from recessions and other economic adjustments, which I assume mean job losses that are related to bankruptcies and our economic situation.

I am just wondering, given your statement and Secretary Kruesi's, is this 150,000 jobs that you are talking about only related to Teamster union job losses?

Mr. PERRUCCI. Yes, sir, it is, but if we can take a closer look at his figures and you know, I can't dispute them and I can't concur, you know, I don't know where he got them from, but let's look at some of the—let's just assume that in his—what did he say? 600,000? 500,000? 500,000 in the trucking industry, well, what does that include?

Does that include—because we are saying we lost 150,000 good-paying benefit jobs. Now does that include in the trucking industry the 60, or probably 40 to 50, 60,000 jobs that UPS created at part-time wages at eight, nine dollars an hour?

Does that include the trucking companies who now pay nine, $10 an hour, 12 dollars an hour? Probably does. It probably does include those. We are speaking of real jobs that were within the trucking industry that have taken it on the chin. And we would suspect that, in fact, the end result of 211, if it goes as it is—and there are so many questions about it.

I mean who qualifies for it? 15,000? What does that mean? I mean there are just so many questions, but to get back on the point. We would suspect, yes, we are going to lose more jobs and

not just union jobs, but good trucking jobs are going to be lost because these companies are going to go by the wayside and Big Brown and Big Blue are going to come rolling in. It is that simple.

The CHAIR. When this thing first started, it was essentially a circle that involved FedEx and UPS, as I recall. Toward the end of the 102nd, I was trying to float a compromise, and I think that included Roadway Package Service. We couldn't do anything in the 102nd, so we let it go. Obviously, the Senate took that circle and said, okay, let's broaden it a little more because, as someone would say, gee, I have a trucking company constituent who is right outside this circle, so let's expand it.

Then someone else would come along and say I have got this trucking company that is just outside that circle. Well, okay, let's expand it. It seems to me they kept on expanding that ring in the other body. Now we have got this ring out here to this point where there is now just a ring that is left out there that may represent 5 or 7 percent of that remaining trucking industry. That 5 or 7 percent—and I am not even sure if that 5 or 7 percent is an accurate figure, but I am just using that right now.

They are the ones who are going to remain regulated and everybody else is going to be under a deregulated regimen and I just wonder whether that is, quote, fair, unquote. Especially if it is, let's say, Jack driving an 18-wheeler and Jim, his son, maybe driving a Bobtail and Molly, Jack's wife is sitting at home doing the billing and they are going to be in a related environment, and Roadway, Yellow, Carolinas, ABF, Consolidated, everybody else is in a deregulated environment.

Now, we know that Section 211 is a convoluted Rube Goldberg kind of an arrangement just done to fit the aviation improvement program.

Let me follow up on Chairman Rahall's question. If we were to say, hey, hold it, let's take a serious look at this and maybe deal with this as it should be under the Motor Carrier Act, would you be in opposition to that amendment?

Mr. PERRUCCI. No, we would not be in opposition if we are talking about taking a look at it under where it should be, okay. Now, I am not saying that we are agreeing to deregulation.

The CHAIR. I understand.

Mr. PERRUCCI. What I am saying as far as I am concerned, Congressman Mineta, you are right on target, that is where it should be. That is where it should have been all along. That is where testimony should have been taken from in the Senate or whatever and I know that is water under the bridge or whatever, but, yes, we certainly and we would be totally cooperative and certainly submit our input and see if, in fact, we could address these problems, whether it is UPS's problem, the trucking companies problem all over.

We are not just here—and, again, we represent so many people, not just UPS. We are not looking here to come in favor and say, wow, if it is good for UPS—and many people think if it is good for UPS, it is good for the Teamsters. That is not always necessarily so. It is what is good for our members, and we have a hell of a lot more than just UPS members. I agree with you that is where it should be and I agree with the Chairman.

The CHAIR. Thank you very much.

Mr. PERRUCCI. Thank you.

The CHAIR. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you very much for coming. I apologize for missing the first part of your oral testimony. I understand you are pinch hitting for Mr. Carey today. I just want to follow up on the question that Chairman Mineta was asking to give you a chance to respond a little more fully. It is my impression that a fairly significant percentage of your active membership is employed by UPS, Roadway, CF and Yellow. Do you have an idea as to roughly what percentage those are?

Mr. PERRUCCI. Within the trucking?

Mr. PETRI. From those four entities how much would be total trucking membership?

Mr. PERRUCCI. That would probably make up 75, 80 percent.

Mr. PETRI. And they are all supporting Section 211 and you are opposing it, and so I just wonder why the difference. Could you articulate why it is good for the economic entities, but isn't good for the employees?

Mr. PERRUCCI. Well, because the rich get richer and the poor get poorer. As I said earlier, we also have many small companies not only that are signatories to the master freight agreement, but what we call white paper contracts that have independent contracts, and there are so many of these that cannot compete, and they are continually driven out of business and further deregulation will continue to drive them out of business. So we have got those which are many of the jobs that we are losing.

I mean there is a litany of trucking companies that aren't there any more, and I would suspect management would say, well, it was bad management we would say, no, it is a combination, and certainly deregulation, the associated transports, Eastern, PIE, Churchill that just went out, St. Johnsberg, it is a litany of trucking companies that are no longer here anymore.

And some people go back to what the commissioner said this morning, and he all but said it, and it is disturbing to me to hear, yes, there is going to be an adjustment period and, yes, we are going to lose some companies. What does that mean to those workers and their families that they are in fact part of those that can't adjust, as he said, or going to be caught in a transition and they no longer have a job?

Well, we have lost those. What do we do?

Do we wait for another company to spring up and say we will do it? Or do you wait for UPS and Consolidated to hire these displaced people, which they probably won't; so, yes, it is a concern and that is what our concern is. We certainly want to see the big companies, and they are successful, but not at the expense of the small trucking company who is out there trying to make a living for his employees and make a profit for himself, that are being driven out and are going to end up with the five big ones by the year 2000, if we don't take a look at this.

Mr. PETRI. Thank you.

Mr. RAHALL. The gentleman from Tennessee, Mr. Clement.

Mr. CLEMENT. Yes, sir.

Mr. Perrucci, I know you want what is best for the Teamsters, and I look at the Teamsters as like the United States Marines. You know they are there first and you are strong and you do a good job representing your people, but I have to believe that there has to be a difference of opinion in the ranks, particularly on this issue of UPS versus Federal Express and I say that and I ask you this question. If Congress did nothing and Federal Express was able to win State deregulations in their court cases, what would be the practical effect in terms of UPS's ability to compete and maintain its work force?

Mr. PERRUCCI. Well, I think they certainly could address it as the Ninth Circuit situation did in the California case. It was deregulated, yet the Teamsters were successful in getting a weight limit on it.

I would suspect that they would be able to go in there like they have done very craftily here and lobby and get what they wish and they certainly will be able to compete with FedEx, as they are now, whether it continues to stay regulated or it is not. They will continue, Congressman, to be able. They are the giant in the industry and, you know, I commend them for that, but certainly do not try to paint a picture that they will be the waif on the side of road, because they certainly will adjust, they certainly will be able to do what is right and they will be competitive and they continue to beat FedEx.

Mr. CLEMENT. Haven't we seen a lot of so-called giant companies fold? I mean just because you are large doesn't mean you are going to survive in the future in a competitive market moving into the 21st Century where we have to make adjustments in order to compete, not only nationally, but internationally.

Mr. PERRUCCI. Well, absolutely, but they have adjusted, and I guess we get into the merits, and I am sure they can't wait to get on this table to comment on what I have been saying, but they certainly are very successful because they have the foresight, because they have gone into new services like second-day delivery and third-day delivery. Services that their competitors cannot offer at this time.

And the thing that just amazes me is, and again I go back and perhaps I have been associated with them for too many years, 28 years, both as an employee and as a union representative, of banging on our door all the time about FedEx and their competition and so forth.

Yes, they are both on board on this. That only signals one thing to me: there are big profits. There is more market to get and it is to squeeze other companies out of the revenue that is there. And that is why they are successful because, yes, they are innovative.

They have the foresight. If they didn't, they would be out of business because they were a retail delivery service back 30 years ago or some when I started with them. They saw department stores were finished, it wasn't the way to go, so they made the smart managerial decisions and they are still doing that, but they don't need any help from their friends in Congress. They have been doing very well on their own.

Mr. CLEMENT. Over the years, UPS management, UPS union worked together extremely well. Haven't you had a special relationship?

Mr. PERRUCCI. We have, as I said earlier, and it has become, I guess, what many people feel is what is good for UPS is good for the Teamsters, yes, we have. We have lobbied in many areas to help them get legislation, there is no doubt about it. We have worked hand-in-hand. We had even offered a year ago when I think it was 3221 was in, I believe this committee, to work with them on something that didn't go anywhere. So we understand their concerns and we are willing to work with them, but every piece of legislation that they propose that will benefit them will not necessarily benefit the Teamsters, and we have to look at an overall view of not just UPS Teamsters but all Teamsters, other-company Teamsters.

Mr. CLEMENT. What about the Motor Carrier Act of 1980? What position did the Teamsters take on that legislation?

Mr. PERRUCCI. I believe the Teamsters certainly were against deregulation, correct.

Mr. CLEMENT. Now, you heard the Assistant Secretary comment, and he made the comment as a result of that act, almost 40,000 new carriers have entered the industry and made rate levels much more competitive. Do you agree or disagree with that statement?

Mr. PERRUCCI. I disagree with that statement. First of all, I don't know where he got his figures from and I don't know what constitutes a new trucking company.

As I said earlier, is it the home-run baker from Bayonne, New Jersey, that has got one truck that doesn't meet any of the regulations, is that a new trucking company? If that is what is in his figures, perhaps they are. I don't know what those figures are. I do know what our figures say. We have lost good jobs, good jobs for communities. St. Johnsberg, for example, up in New England, a whole community behind a company that is there.

Mr. CLEMENT. You and I both know that most new jobs that have been created the past decade have been small business. They haven't been big business. They have been small business, small operators that provide a service. You know, and I wouldn't necessarily characterize them as shoddy business people, but they are small.

Mr. PERRUCCI. I didn't say that. I am not talking about the small—as I said earlier, Congressman, we have small trucking companies, 6, 8, 10 people under contract and there are companies that are nonunion, 6, 8, 10 people that do an admirable job.

But there are also those who do not do a good job, who pay subscale, who have people on the road that don't have valid drivers license or probably have points that are very close to them being suspended. There are those folks out there, whether you want to believe them or not, and we feel that continuing to deregulate is going to give more access to these types of companies.

Mr. CLEMENT. I think what we are referring to here is to have economic deregulation, but not to have safety deregulation, and not to have fitness deregulation, and not to have insurance deregulation, that those responsibilities would remain with the State. What we are referring to is economic deregulation.

Is that your understanding?

Mr. PERRUCCI. Well, I am not quite sure of what exactly 211 states. As I said, it is a patchwork type of situation. We have talked about again, and I heard the commissioner said, that the police can certainly regulate the safety. We feel it is not just safety, it is everything. Yes, economically, also, to allow that small shipper—I mean that small company, allow them to compete. So it is not just safety, it is not just economic; it is the whole package in its entirety.

Mr. CLEMENT. Let's assume we make a decision this year, either Section 211 of Senate bill 1491 or total deregulation. Which of the two would you prefer?

Mr. PERRUCCI. Well, is that a loaded question or what? Could you repeat that again?

Mr. CLEMENT. That is my southern twang.

Mr. PERRUCCI. Which one would I prefer, the gun or the knife?

Mr. CLEMENT. Of the two, let's assume we make a decision whether we deregulate from what the Senate has done under Section 211 of the Senate bill or we go even further than that and deregulate, totally deregulate.

Do you have any feelings about if we had just those two choices what would you prefer? Because I know you mentioned a while ago, and we have talked about maybe some carriers, particularly the LTL carriers, may be disenfranchised or at a disadvantage.

Mr. PERRUCCI. Well, we would prefer neither or neither or whatever. The fact of the matter is that you know you are not giving—as I said, you are either giving me the knife or you are giving me the gun and it is just not—we say it is a bad, bad situation, 211, and it should go back and take a good look at it, and get rid of it and start again and forge something that is certainly livable; and as it is now, it is not and we are certainly against total deregulation.

Mr. CLEMENT. My last question: if we do start again, what do you propose then or would you just stay in status quo where we are now?

Mr. PERRUCCI. No. I think, and we certainly would like to submit our input into it. You know, perhaps there is some way to look at it. It might be a minimum weight limit. It might be something that certainly could be looked at that would—you know that we might—we would not close—the only doors, as far as we can see, that hurts us is total deregulation and 211 as it is now.

Mr. CLEMENT. Thank you.

Mr. FINK. Congressman, we provided for the committee—Mr. Perrucci provided for the committee a study that recently was done under the Cornell University auspices, which makes some suggestions as to the types of things that ought to be evaluated, and one of the concerns that we have had continuously about deregulation is that it has failed to address the employee concerns. It has failed to address what happens to the employees. There are no labor protective provisions associated with it, with any of these considerations. If you took a look at that study and allow us to contribute by addressing the employee concerns, we would be more than happy to work with you.

Mr. CLEMENT. All of us, as you know, want to create jobs. We certainly do not want to eliminate jobs. And we want to bring about more opportunities and more business for Americans.

Thank you.

Mr. RAHALL. The gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman.

Mr. Perrucci, I got the correct pronunciation?

Mr. PERRUCCI. You got it. Yes, sir.

Mr. LIPINSKI. It is because of all those Italians I grew up with. No, not soccer games. The Italians I grew up with didn't play soccer. Joe Dimaggio. No soccer players.

First of all, I want to thank you for your testimony. I appreciate hearing it. It was very refreshing.

I would also like to have a copy of your testimony, though, because I don't have a copy of it and it doesn't seem like anyone else here has a copy of it. We do have a copy of Mr. Carey's testimony, but your testimony has been much more elaborate than his was. It came up with a lot more facts and figures, and I think it will be very helpful to us. Those of us who are prone to be supportive of the Teamsters and supportive of your position are in a very, very difficult situation here.

It would appear as though the die, to a certain extent, has been cast. There are people advocating that we go to total deregulation. There are other people that will be content with accepting the 211. I realize that the position that you are in is a very, very difficult position. But I don't know where there is enough support at the present time to roll back the tide that seems to be sweeping upon us.

Now, I know that myself and other members of this subcommittee and the full committee are willing to stage a strong fight in behalf of your position, but I don't know if that position will be successful. I think it is incumbent upon you and all the members that you represent to contact all the members of this committee and make your case very directly to them.

If I may suggest to you perhaps the best approach to use is one of buying time, trying to delay what we have before us so you and those of us who sympathize with your position can have genuine input into their situation. You know we are in an era of deregulation.

I personally do not think it has been good for the American working man and woman, but it seems to be continually moving in that direction, and I always get a kick out of the fact of all the jobs that allegedly it creates, which you and I and everybody else knows are jobs that probably pay one-third of what the American working man and woman were making before the deregulation. But I think if you do contact, make real effort on this committee, we might be able to delay this and you can have input into it and we can have input into this. Obviously, the Public Works and Transportation Committee and their subcommittee, there are members on here who are very much sympathetic to your position, otherwise you wouldn't be having this hearing today.

I think you can count on a lot of support here. The point I want to clear up though for the record is that many of us have large UPS centers in our districts. I have one of the largest in the country and

they are building the largest in the country in my district. We all know the association between the Teamsters and UPS. There is quite a campaign going on, as I am sure you aware, of the Teamsters Union members at United Parcel Service contacting their representatives and trying to influence them into supporting 211.

Could you elaborate just a little or can you shed any light on what is going on there? And I would also like to know what percentage of the membership of the Teamsters is actually employed by United Parcel Service.

Mr. PERRUCCI. Thank you very much, and thank you very much for those comments, Congressman.

We have about 165,000 UPSers who are Teamsters. And to address the point of—and I know many members of Congress both in the House and in the Senate received letters from constituents who are UPS employees, our members are saying, "right on, 211, rah, rah, rah." If the truth be known, and this is undisputed, what the company did was the morning meetings, which is they have their morning meetings and their afternoon meetings. Before the starting time of each shift, the employees were called together on the clock told then, here, fill out this form. Type up a letter. They had an example of how to do it.

Some of them were strictly form letters. On the clock they were allowed to fill it out, being told that this is going to be good for you, this is going to mean more revenue for UPS, more volume for UPS, therefore, it is good for you. Fill it out, send it in. Now this was all done on the clock, done spontaneously in the morning. There was no debate on it.

We certainly weren't invited to say, well, see what your union representative thinks about it. It was a captive audience situation and that is exactly how it was done. But afterwards when we did find out how it was done, we then sent communications to our local unions, we explained to our members and then in many areas the letters started coming in the other way saying, "Well, wait a minute. We didn't really understand what this was all about." So that is how UPS got those letters sent from its employees to the members of Congress.

Mr. RAHALL. Would the gentleman yield on that point?

Mr. LIPINSKI. I certainly will yield to the chairman.

Mr. RAHALL. This is a postscript, no doubt. I have been inundated by the same, but they all addressed me as Senator Rahall. I am not sure I took kindly to that.

Mr. LIPINSKI. I think that would be a wonderful idea. If it was Senator Rahall, then I would move up further in seniority here.

I thank you for clarifying that and I think that is very important to get it out on the record exactly what that situation was.

Now, my very good friend, Mr. Clement, over here and he is a dear friend of mine, even though we don't agree on this particular issue, asked you a question that you were not too enthusiastic about answering.

So I want to ask you a question that you will be very enthusiastic about answering. If you and I had the power, the ability to remedy this situation and in behalf of the American working man and woman, what would you do?

Mr. PERRUCCI. I would certainly leave it exactly as it is, regulated. I think we need more regulation instead of less regulation. It creates new jobs. It creates good jobs. And it certainly does, whether trucking companies agree with it or not, it does stir competition because everybody is on a level playing field, then not just the big guy on there and the little guy thrown off the field.

Mr. LIPINSKI. You are more conservative than I when I moved to roll back the decision in California, Oregon, and Washington. I thank you for your testimony. That is my position. We will see what we can do in behalf of your issues.

Thank you for being here. Mr. Chairman, thank you very much.

Mr. PERRUCCI. Thank you, sir.

Mr. RAHALL. The gentleman from Illinois, Mr. Poshard.

Mr. POSHARD. Thank you, Mr. Chairman.

Mr. Lipinski got into an area, Mr. Perrucci, that I wanted to inquire about. Because I have received many responses from Teamsters members who work for UPS in my district who are fully in support of this and I thought there might be some division in the ranks and so I wanted to inquire about that.

I guess I would express something similar to what the Chairman had expressed before in his opening statement, and I think all of us, if we felt that complete deregulation would lead to market forces determining price and demand and so on of the products that are transported across this country by the trucking industry, we would all support that. But when I look at deregulation, whether it has been in the air industry, or banking or whatever and, representing the predominantly rural district in this country, I don't see that it has led to market forces determining much in terms of competitive playing field.

If market forces were the determining factor of everything, it would be great. We wouldn't have a health care crisis in this country either, but for decades now we have had an industry that hasn't responded to market forces whatsoever. People charge whatever they want, whenever they want, however they want, and that is why we have a health care crisis today. So just the fact that we deregulate something or leave it open, so to speak, doesn't mean that it is going to respond to market forces.

And I am a little bit concerned about this particular 211 and the way it has been drawn up. I don't have any qualms about leveling the playing field between UPS and its competitors and that sort of thing, but I think we have to take a close look at total deregulation here and especially its effect upon your industry and the rural areas and the smaller guys in this country. I really am concerned about that.

Mr. POSHARD. Mr. Chairman, I didn't really have any questions other than the one that seemed to be—where Teamster members were writing us en masse with respect to this particular issue in favor of it, and I was just going to ask Mr. Perrucci about that, but that has been answered.

Thank you.

Mr. RAHALL. The gentleman from Michigan, Mr. Ehlers, has been here a long time.

I am sorry. The gentleman from Arkansas, Mr. Hutchinson, has been here longer than Mr. Ehlers.

Mr. HUTCHINSON. Thank you.

Thank you, Mr. Chairman.

And thank you for your testimony. I have enjoyed it.

I really take exception, though, to the tenor where we just sound like deregulation is the end of the world and it is a horrible thing, and so much of what has been said flies right in the face of what the Department of Transportation—when the Under Secretary was here this morning, and what he had to tell us about the safety records since deregulation on interstate, and the job situation.

And I am just greatly puzzled. I mean, it seems to me that what you have been telling us is that you can't explain it, but that their numbers are all wrong, that they tell us in the area of safety that since interstate deregulation, the fatal accident rate for large trucks has fallen by one-third.

In light of that, what is the basis for assuming that the impact of intrastate deregulation would have a negative impact on safety?

Mr. PERRUCCI. Well, I think—and again, as I said earlier, you know, I am not taking issue with his numbers. I have no idea where he got his numbers from, where he ascertained them or wherever. I just know what our numbers say.

Intrastate—it seems to me, it is even easier to duck the safety issue in intrastate if it, in fact, is not regulated, if, in fact, it is not a partnership with law enforcement. You are not leaving the State. You don't have to use the interstate highway system if, in fact, you don't want to.

So it would be much easier, we feel, within the States to be able to duck many safety issues. That vehicle is not subject many times to weigh stations, perhaps can use the county roads, State roads. So I think it is apples and oranges when you compare between interstate and intrastate.

Mr. HUTCHINSON. So you are saying that deregulation on interstate may have resulted in a better safety record but that will not carry over?

Mr. PERRUCCI. I am not sure if it has or it hasn't. I would assume, of course, that everyone has been safety conscious, and again, I think that it has to be a situation of both regulated and law enforcement, but not just one entity.

Mr. HUTCHINSON. Well, moving to that job issue, again, DOT, when they were here, said that we had a—after adjusting for bankruptcy, job losses, an increase of over 500,000 jobs since interstate deregulation in 1980, and that the number of carriers has increased by 40,000 or 143 percent.

Now, if I heard you correctly earlier, you said that your concern was that 211 would result in the big companies getting bigger and driving up the small companies, and yet what I hear the small companies telling us is not regulate more. What I hear them saying is, be fair with us, level the playing field, deregulate completely and we are willing to compete, that we can match the companies, we can survive and we can thrive in a competitive marketplace if the rules are fair, just don't put us at a competitive disadvantage. That is what they are telling me.

They are not saying we want more regulations. So I am kind of—I guess my question is, where do you—what is the justification for

the fear for the small companies if they are not saying we are afraid? They are saying level the playing field and let us compete.

Mr. PERRUCCI. Well, I know the—many of the small companies that we represent, in fact, are telling us that they are concerned about it. And again, if you go back to those 500,000 jobs, I don't know what kind of jobs have been created.

As I said earlier, UPS has created jobs at $8 an hour, $9 an hour. Part-time jobs, that would be in the trucking industry, I don't know what constitutes, under the Commissioner's study, about what is a company. Is it an owner-operator, one person? I would assume.

So what kind of jobs have been created out of those 500,000 if, in fact, those figures are correct? And are they quality jobs and are they jobs that the American people can live off of? Do they have benefits with them? Do they have a living salary with them?

So I think it is a little deeper than just throwing a number of 500,000 out. If we are going to be impressed with numbers, we are in trouble. I mean, numbers are one thing, but are they quality? Are they quality jobs? Are they really helping the American people? Are they helping the family, the American family realize the dream?

I don't think so. I think if you take a close look at what kind of jobs were created, you are going to find that they are tainted a little bit and they are not quality jobs, Congressman.

Mr. HUTCHINSON. I would say creation of 40,000 new carriers and 500,000 new jobs, that is a good thing.

A couple of times I think I have heard you refer to 211 as a patchwork, and, you know, we have got 42 different—40, 42 States, I am not sure. There has been a little controversy on how many States, but——

Mr. PERRUCCI. That is what I mean by patchwork; don't even know how many States are involved.

Mr. HUTCHINSON. That is my point. I am not talking about 211 now. I am talking about 42 State approaches to regulation. That seems to me to be a patchwork.

And what has been suggested here today is that by preempting and deregulating entirely, we eliminate 42 different patchworks. Wouldn't that solve the problem of the patchwork?

Mr. PERRUCCI. Absolutely not. It is taking in one fell swoop, doing away with regulation that is probably benefiting the citizens of that State, the employees and their families and the well-being and the safety of that particular State. No, I do not think that is the right thing to do.

If I did, I wouldn't be here testifying against it. The patchwork situation is tacking it onto a bill that has to do with airport improvement and running it down the road that way. That is what the patchwork is, and still we don't even understand.

Who qualifies for it? How do you get to 15,000 deliveries? I don't know.

You can probably do it any way you want. What companies now come underneath this umbrella of protection, as it were, or deregulation, as it were?

Mr. HUTCHINSON. I heard your concerns about that but it is unclear, there is ambiguity. And once again, I would just say that by broadening that deregulation, you eliminate that problem entirely.

Mr. PERRUCCI. I guess we disagree on that.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Michigan, Mr. Ehlers.

Okay. The gentleman from Minnesota, Mr. Oberstar?

Mr. OBERSTAR. Thank you, Mr. Chairman.

I don't have any questions. The Teamsters' position is very clear. The testimony has made it perfectly clear what their position is on these issues, and I needn't belabor the point. I think we need to press on with our witnesses.

Mr. PERRUCCI. Thank you.

Mr. RAHALL. Mr. Perrucci, Mr. Fink, thank you very much for being with us today.

Mr. PERRUCCI. Thank you for the opportunity to present our case. We appreciate it.

Thank you.

Mr. RAHALL. Our next witness is Thomas J. Donohue, President and CEO of the American Trucking Association, Washington, D.C.

Tom, we welcome you once again to the subcommittee.

TESTIMONY OF THOMAS J. DONOHUE, PRESIDENT AND CEO, THE AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. DONOHUE. Thank you very much, Mr. Chairman.

Mr. RAHALL. You were here about a week or two ago regarding the ICC. We welcome you back.

Mr. DONOHUE. Thank you. Very happy to be here. Good afternoon.

Mr. Chairman, last week in between my appearance here and now the new appearance, I testified in the Senate on the ICC funding and on Section 211 of the airport improvement bill and the trucking reform legislation that was introduced over there just recently, and my comments today will be similar to those made in the Senate but will reflect on the discussion that took place there as well.

I think it is important for the committee to understand that ATA has changed its policy on intrastate regulation. It was not an easy debate. It was very spirited, but last month, the executive committee voted to no longer oppose Federal preemption of State regulation on motor carrier rates and entry based on economic factors.

In a large part, this change in policy was due to the actions of the Senate in adopting Section 211. It also had to do with other current realities, the Federal Express California court decision, the deregulation actions in many States, and other Federal legislation that is going to affect this subject, such as the ICC issue.

Now, we will support the 211 section and encourage the Congress at the same time to preserve beneficial State rules on uniform liability bill—uniform liability, bills of lading and antitrust immunity for interlining in particular. These and other related factors are necessary for the orderly conduct of our business.

We would further encourage the committee to preserve the benefits of State licensing of trucking operations, including financial fit-

ness requirements, uniform operations—operating practices and existing tax exemptions.

This brings to mind the discussion that has been had all morning about safety, and I believe the Chairman knows about the significant improvement that has been made in highway safety, a 40 percent increase in the miles and a 40 percent decrease in the fatalities.

Further, we would encourage the committee to allow carriers a tax write off for any reduction in value in State operating authorities as provided by current law or under new legislation, if it is necessary.

We would encourage this committee to give the broadest interpretation of to who may qualify as being deregulated and to consider further legislation, if necessary, to provide these opportunities to all intrastate carriers in the near future. And finally, we would encourage you to continue the State regulation of household goods transportation.

Now, based on this new policy, ATA asks those Members of the subcommittee who will be sitting on the conference committee to revise 211 to protect the beneficial noneconomic aspects of State regulation; and, number two, to insure that the benefits and rights being given to some carriers are enjoyed by all carriers. In other words, let's level the playing field.

Now, Mr. Chairman, with your permission, may I just say a word about the ICC. We oppose any elimination of the ICC that allows the rules and regulation to remain in place without a means to implement and administer them. We fully understand the desire by Members of the Congress to control costs, not only the cost of the ICC, but I am sure the cost in business as well.

We specifically oppose the congressional action that zero funded the ICC and left us with all the rules and regulations. However, if Congress believes there is a way to do this and at the same time to protect our ability to function under the law, they will have our support.

It appears that some action is now going to be necessary. The Senate Appropriations Committee just reduced the ICC's budget by a third and—at least the subcommittee did, and also they left in all the revenue for functions that they are going to get rid of, so the reduction will be even greater.

I think it would probably be useful then for me to make very brief comments about the regulatory reform act that is being discussed on the other side of this Federal center.

Let me briefly say that regulatory reform bill contains a series of studies that no one would oppose. It sets safety criteria in insurance as the way to receive approval at the ICC, and there is no objection to that.

We have been doing that for 10 years, and it suggests changes in the tariff filings, and what our concern is, is not what happens in the filing of a tariff and the ICC where it is put in a cardboard box. Our concern is that we still have the protections of the filed-rate doctrine that allow us to interline between one small company and the next, and that provide the protections of the law for us to do our business in an orderly way.

And finally, let me say on the matter of exemptions which have been proposed in that legislation, as a person and as a representative of major industry, the more things we can get rid of, that is fine, but we ought to make sure that those exemptions are limited so things that you have worked so hard on, like the negotiated rates act and fitness and safety licensing and insurance, are not exempted out without the understanding of the House and the Senate.

Mr. Chairman, let me conclude in not just summing up what I said but adding a few additional thoughts.

I think if we look at the facts today, we could probably figure out that the ICC will be significantly scaled back, and as a result, a number of their functions will be curtailed or eliminated.

Second, I think we can say that even without any action by the Congress, some number of motor carriers have been deregulated by the courts and have the ability now to apply that decision within the individual States.

And the third thing I would suggest is that one-third of the States are currently deregulated or behave exactly as if they are deregulated, and other States are thinking about changing their activities, and those States are like Texas and California, rather significant that would move things in a very aggressive way.

So, Mr. Chairman, these facts suggest to us that change is imminent but that change must be orderly and well-managed. So we ask you to please carefully review the recommendations submitted by ATA that would level the playing field and maintain the necessary noneconomic rules of the road for the orderly conduct of our business.

We suggest that you do as much as possible to achieve these objectives within Section 211 of the Airport Improvement Act.

Mr. Chairman, I came here today from a meeting of the State Trucking Association executives who are meeting in Massachusetts, actually had we known we were going to be here, we probably would have met in West Virginia, but they have made clear the need for clarifying amendments and suggested that at a minimum, the effective date of any of this legislation not be before the first of the year, 1995, so that by the time it gets passed, then there be a time to get the word to the States and everybody to get themselves organized and in a sensible way.

Mr. Chairman, it has been a long morning and a long early afternoon. This sums up our feelings on this: We want to be helpful. We want something that works and we want to recognize the reality we all face. This vehicle is moving and it is essential that we guide it, not follow it and not chase it.

Thank you very much, sir.

Mr. RAHALL. Thank you, Tom.

Let me ask you—maybe you want to enter our sweepstakes contest here—how many States, according to ATA, still maintain intrastate motor carrier economic regulation?

Mr. DONOHUE. Mr. Chairman, I brought along a—and I will submit for the record a study that has been done, a ninth annual report of motor carrier regulation by the respective States, and it is the regulatory—State regulatory study that was done by Daniel Baker. And you can read it a number of ways. But the annual

study reports that 41 States continue to regulate their motor carriers. Maryland became the seventh State to just deregulate.

I cannot make a lot of heads or tails of their numbers, but let me suggest to the committee that there are not just regulated and deregulated States. There are very aggressive regulators. There are aggressive deregulators that—you know, some States have never been regulated and there are lots of people that do it with tongue in cheek.

I will tell that you a third of the States in this country do not aggressively regulate their motor carriers on the matter of economics, but they do, of course, on safety, because that is a very clear issue and the results there speak for themselves. But I will put this in the record just to add to the list of statistics so that we might have a broader sweepstakes.

Mr. RAHALL. Well, we appreciate that.

ATA has had a traditional policy, has it not, of being against Federal preemption of such State regulation?

Mr. DONOHUE. Yes, sir, we have, and of course we have all agreed to preempt the States on all very important things, such as the bingo stamps that save the industry more than a million dollars and the driver's license and other matters that show in those instances preemption has worked.

But we have had a policy that said we did not want the Federal Government to preempt the States. And I am here to tell you, you are going to hear from some of our members today who continue to feel that way, but if you have the change in the Federal courts, the changes in the ICC, the major changes Kentucky just deregulating, Maryland just recently deregulating, the discussions in Texas and California, I mean, after a while, you get the clue.

Mr. RAHALL. So it is "go with the flow"——

Mr. DONOHUE. No. It is "go with the flow."

Mr. RAHALL. It is what?

Mr. DONOHUE. "Go with the flow." Our suggestion is, what we would like you to do is give the—"go with the flow" to give the States the rights to eliminate regulation based on rates and entry but to continue to allow the States to assure the orderly conduct of our business with matters such as interlining and safety and insurance and those kinds of matters which we have put in our testimony.

It is not simply of saying yes or no. We are suggesting that there is an orderly way to do it and I am sure the committee will be able to reach that objective.

Mr. RAHALL. Thank you, Tom.

Gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you very much.

Thank you for your testimony, and I am sorry we have delayed you a little bit today. I know you have other things to do as well. But I wonder if you could comment on something that some of the previous witnesses have disagreed about, and that is the effect of deregulation or of Section 211 on jobs in your industry. Do you feel that there will be severe job losses and a reduction in safety, as some have alleged, if 211 is adopted, or do you think the contrary will be the case?

Mr. DONOHUE. Let me separate them and take them one at a time.

In the matter of jobs, I can pretty much assure the committee there will be no job loss. Let me not address that from a deregulation point of view. Let me simply say that if we maintain a 2.8 economic growth rate in this country between now and the end of the century, we will have so many new jobs, we will drive—if you just take about an eight-year period of time ending at the year 2000, we will have in excess of a 30 percent increase in volume, a 31 percent increase in miles driven and about a 14 percent increase in heavy vehicles. That assumes that we can encourage the railroads to double their intermodal freight between now and the end of the century—and I am sure Mr. Lewis just said yes—but the point is, Mr. Petri, we will have so many new jobs, we could hire today a whole lot of new truck drivers if we could get qualified drivers ready to go to work in certain elements of our industry.

So the job loss argument flies in the face of economic growth. It flies in the face of NAFTA. It flies in the face of the basic understanding that most people have that we need more people to work in our business.

On the matter of safety, I associate myself with those that say these are really separate issues. What has—separate issues, so long as we don't do anything to take away the State's ability to deal with safety and insurance and other matters.

But we have gone to, since deregulation, to the commercial driver's license. We got rid of the commercial zones where people are able to operate without inspection. We have gone to about a 1.6 million roadside inspections. We have gotten rid of radar detectors in trucks.

We are very, very, very much involved in the commercial driver's license and the benefits of that and we are doing drug and alcohol testing. Now, I am—I will assure you that safety is high on everybody's mind because it is very good business for us.

It is very essential, good public policy and good relationships with the community and it is damn good politics, and we are going to work very, very hard and this legislation will not interrupt the process of continuing to improve our safety record.

Mr. PETRI. Thank you very much.

Mr. DONOHUE. Thank you, sir.

Mr. RAHALL. Distinguished Chairman of the full committee, Mr. Mineta.

The CHAIR. Thank you very much, Mr. Rahall, and thank you very much, Mr. Donohue, for your testimony as well as the principles that you have laid out in terms of what really should be looked at as part of this Section 211 discussion and policy determination.

Earlier, I had asked Assistant Secretary Kruesi whether a trucking company which was regulated and which had to compete for business against a deregulated carrier, would end up dead. His answer was yes.

I was wondering what your answer would be?

Mr. DONOHUE. Well, with all due respect to the Assistant Secretary who I have a lot of respect for, I think that is a—that is a very quick answer.

I would make a couple of points: First of all, on a broad-based look at the economics, if a lot of trucking companies ended up deregulated, the ones that were regulated would clearly have a disadvantage.

Would they immediately go out of business? Well, it depends what their niche is and what kind of service they were providing.

We are suggesting in our discussion that the household-goods carriers, because they sell services to people that maybe buy it once or twice or three times in a lifetime, would stay under regulation. Well, they are not going to go out of business because they are not competing directly with people. And then some folks that are in other parts of this business, on the margins, could probably stay. But when you look at the reality, the long-term economic reality, it is very hard to have one group of people playing a sport with one set of rules and another group of people on the same field playing with another set of rules. It just doesn't make sense.

So what I would say is that the people who—if a good number of carriers were deregulated in the same market niche, the people that were trying to compete with them on a regulated basis would be at a disadvantage for two reasons: One, they would have the regulations to contend with; and two, they would have a totally different mind-set, and if you don't cross the mind-set bridge, you can't compete.

You know, when you look at what happened since deregulation in the early 1980s, and say, look at all those people that went out of business, a lot of those people went out of business because they couldn't deal with change, because they wouldn't adjust their companies to new realities. And not only new realities that came from deregulation, but new realities that came from new technology, that came from new management systems, that came from new computer systems.

In this country, if you don't change, you have a very serious problem. Look at what has happened to IBM and General Motors who are trying desperately to restructure themselves. They didn't keep up with technology. They didn't keep up with market change. They lost sight of what their customers wanted, and the customers have changed.

When you are regulated, very often your customer is your regulated. When you are deregulated, your customer is the shipper and the receiver, because the regulator isn't in the business.

So I think, Mr. Chairman, it is not only a matter of unregulated or not. It is, have I made the mind change? Have I shifted to a new way of running my business?

Do I recognize that change around me is moving at a very quick rate and regulated or not? Do I have to adjust my business?

And there is no way for government to protect companies who don't keep up with change, but we can help them by giving them a level playing field.

The CHAIR. What is it that says, yes, we ought to isolate here the household-goods carrier from——

Mr. DONOHUE. Mr. Chairman, I think there are two reasons. The first is, everyone else that is in this business, for the most part—I mean, almost, sells their services to people who buy transportation services on a regular basis. They sell services to the local

manufacturer or to the food processor or to the grain producer who has some sense of buying those services.

The household-goods people sell them to our families who move, you know, once every couple of years or twice in a lifetime, and so some regulation of how those rates are—and entries are arranged and who those people are, probably makes sense.

The second reason that it makes sense not to include them is that the way they are structured with all of the local agents working with a national organization, needing a lot of benefits of the law to allow that to happen, and also recognizing that there is a major lobbying force that might get right in the middle of this thing right now, and I think the reality suggests that it would make it work a little bit easier if they weren't included.

The CHAIR. Would there be a rationale for tankers?

Mr. DONOHUE. I am going to answer that, Mr. Chairman, but we were about to start the daisy chain and I can think of some other places there is a rationale. I mean——

The CHAIR. That is what we will start doing, going right down the line.

Mr. DONOHUE. What about oil field haulers and virgin forest products people, and folks like that. I think some of those folks that may almost be in the captive shipper kind of business like some of our—I used to say competitors, but our intermodal partners are, there might be some reason to look at that.

I haven't focused on that very much, but I would be glad to do that with you. But I think in terms of tank truck haulers in general, one has to say, first of all, a tank truck division of ATA has taken a policy in favor of deregulation. But I think one has to recognize, that is a much, much broader industry than some of the other more specific industries we are talking about, and many of them are owned by companies that are in other parts of this business. So I don't think they are encouraging, nor would I step forward and suggest that they be exempted.

The CHAIR. On page 3 of your statement, you say that the ATA no longer opposes Federal preemption of State regulation of motor carrier rates and entry based on economic factors, so long as certain noneconomic factors are retained. Do all or most of the States maintain the noneconomic factors that you listed in your statement?

Mr. DONOHUE. Well, we come again back to this 50 States, but most of the States that presently do regulation take care of those economic factors. Some of the States that don't—noneconomic factors, excuse me, sir, and some of the States that are not regulated have rules and procedures governing the noneconomic factors.

I think what we are saying to them, though, Mr. Chairman, is not that you must do this. We are saying when we preempt the State from regulating on rates and on entry, you may continue to do the other things. So we are saying to the State, if what you had was an antitrust arrangement so that small companies could interline with themselves and with big companies and have a single rate, and everything, and you didn't care what the rate was, if you want to keep doing that, that would be fine.

If you had some arrangement on insurance or safety or on questions of liability and you want to keep doing that, that would be

fine. We are not suggesting to the States or asking you to suggest to the States that they will. We are saying if you have been doing this and you would like to continue because it adds to the orderly conduct of the business within your State, then feel free to do so.

The CHAIR. Now, there has been mention of the safety record. Has the safety record in interstate trucking gotten better or worse since the passage of the Motor Carrier Act of 1980?

Mr. DONOHUE. Better, better, better.

The CHAIR. Now, does that support then your point and mine earlier, that economic regulation and safety regulation are two completely different things? We deregulated the Commission in 1980, but we improved safety regulation, and the result was a better safety record.

Mr. DONOHUE. Mr. Chairman, my view is, we are doing everything possible to improve safety until we think of something new tomorrow, and it is not going to be affected one way or the other by what happens in economic regulation.

We had some testimony from some of the NARUC people and others who are concerned about that, but I can absolutely assure you that no governor, no Member of Congress and nobody in the DOT on the Federal level or the State level are going to let safety programs, positive programs and inspection programs suffer because of this legislation.

The CHAIR. The—you mentioned the filed-rate doctrine. In order to retain antitrust exemptions, interlining, do we have to retain the filed-rate doctrine? Can we not do away with the filed-rate doctrine but still do interlining, still maintain antitrust exemptions, et cetera, some of these other things that are beneficial, instead of having these boxes?

Mr. DONOHUE. Well, Mr. Chairman, I am not too sure we have to file the rates, you see? You could maintain the provisions of the doctrine.

The CHAIR. That is my point. Could we do away with the filed-rate doctrine and still have these other things that——

Mr. DONOHUE. I have the same problem you do. You have the lawyers that advise you and I have a lot of lawyers advising me, and we are all sort of holding our breath.

Actually, I am thinking of changing some lawyers soon because I haven't been getting very good answers the last couple of days. But seriously—it is all right, Ken.

The CHAIR. We may have an opening on the committee soon.

Mr. DONOHUE. Mr. Chairman, I think we have to figure out a way to keep the protections, and at the same time, I think we all know what happens to the paper that is filed, not only at the ICC, but other places around this country. I think it is an environmental tragedy, considering all the trees we cut down to do it.

Now, if it were being used for other purposes, then we would understand that. But at the same time, while we make this argument and everybody can see visually we are not going to file that stuff that goes in the paper boxes, we still have to recognize the protections, that the law has provided for the orderly conduct of the business. And I am sure that working together with the people involved in this thing, we will figure out a way to do that. I don't know what

you are going to call it, but we have to have the protection of the law for the orderly conduct of the business.

The CHAIR. But tariff filings we can get rid of?

Mr. DONOHUE. Common sense suggests that.

Now, Mr. Foley and some of my other friends have another view on that which I am very much respectful of. But I think the realities of what is happening at the ICC, where that system is, if we can find a way to protect the industry's ability to do business legally and thoughtfully, I don't think we need to fill up cardboard boxes at the ICC or anyplace else.

The CHAIR. Well, we are facing this situation where we have an amendment that has been accepted and voted on here in the Congress to eliminate the ICC, but there are a lot of functions that they still perform that we would like to, of course, have them do.

Last year, we passed the Negotiated Rates Act, as you well know, and helped us do, and yet if we have elimination of the ICC, then the question is, what do we do with the NRA, Negotiated Rates Act, and so—but this issue of filing the rate—the filed-rate doctrine becomes pretty important in that.

Let me again thank you, Mr. Donohue, for your leadership and for your being here to testify.

Mr. DONOHUE. Thank you, sir.

The CHAIR. Thank you, Mr. Chairman.

Mr. RAHALL. The gentleman from Pennsylvania, distinguished Ranking Minority Member of the full committee.

Mr. SHUSTER. Thank you very much, Mr. Chairman.

Mr. Donohue, I have been very much taken with your testimony and the historic change in the position of ATA with regard to economic deregulation. We started this whole process by saying we wanted to fix the package problem, and with broad, bipartisan support, do that, and the Senate went beyond that and indeed has adopted a partial deregulation. I have great concern about that, particularly as it affects the small- to medium-size, LTL carriers. But as I understand it, you are saying we should go the whole way on economic deregulation?

Mr. DONOHUE. Sir, the whole way on the matter of rates and entry—there are other factors which our testimony might include in economic regulation that are important to address in terms of our business.

Mr. SHUSTER. Financial worthiness, for example?

Mr. DONOHUE. Yes, and the question that we are talking about, antitrust immunity where it is needed under the law and insurance and those kinds of things, yes, sir.

Mr. SHUSTER. I also have been taken with the administration's very strong position in support of going beyond the Senate position. So it seems to me that this truck is on the road and barreling down the road pretty quickly so we should try to fix it as carefully as we can.

If we eliminate the ICC—do you think the Department of Transportation can absorb the functions that are retained or do you think that the ICC itself need be continued into the future? That is something, of course, that would have to be defined in a very, very limited residue of functions.

Mr. DONOHUE. Well, there is a fundamental difference between a regulatory agency with a series of commissioners appointed from both parties and an administration department of the Cabinet that is run by one of the President's appointees.

The responsibilities of the ICC in a judicial sense to make rulings and judgments on matters including mergers and acquisitions and matters of discourse between carriers and participants in the system is a little different than what they generally do over at the DOT.

I think the given is, there is going to be some reduction in the functions of the ICC if, in fact, there is going to be some significant reduction in the money, and there are some things there that could obviously be taken care of by the DOT and some things that don't seem to make sense to me to put over there.

That is why I think some of the legislation that is being discussed in the Senate came about, not because folks were all of a sudden interested in taking care of tariff filings and other matters, but because they were looking for a way to conduct the business within the funds that would be available.

By the way, I mentioned just before you came in, I am not sure whether you heard me, that not only did they reduce the spending by a third in the Senate already, but they left in $8 million worth of revenues for most of the functions that they are going to take out. And while we are good supporters of the government, I am not sure we are going to pay a fee for something we are not doing. And so you are looking at a rather significant cut.

But I would suggest that many of the functions of the ICC would be better in an independent agency, although I understand the passion of all this. And we would be happy to work with you and your colleagues to sort of lay out which ones could be done in which place, although I see—I see some changes.

Mr. SHUSTER. I am inclined to agree with you with regard to the need for an ICC in the future in a limited form, but there is the argument of the airlines, and that the functions are being handled by the Department of Transportation, including questions of mergers.

Mr. DONOHUE. That is true.

Mr. SHUSTER. And isn't that an argument against the position that you and I seem to agree upon in terms of keeping the ICC?

Mr. DONOHUE. Well, as we know, we look at the airlines, you are talking about a handful of airlines. When we start looking at railroads and trucking companies and others, you have a rather significant number. And when you look at the airlines, you find that they are so large that it really becomes not the DOT—I mean, the Justice Department, the White House and others are very much involved in that, and I think if we could find a way and make a sensible argument to keep those functions there, I think it makes sense.

I would—you know, not tongue in cheek, somewhat seriously, but with a great sense of respect for our business partners in the railroads, I would also say it would be somebody to sort of keep an eye on what they are doing, because you know in the——

Mr. SHUSTER. They say that about you.

Mr. DONOHUE. Then I think we are doing something worthwhile.

But in the Department of Transportation, part of the charter and the mission of the Federal Railroad Administration is to advance and promote the interests of the railroads, and there isn't anybody over there that does that for trucks, by the way. So I think that there is some argument made to keep a sensible, sensibly-sized, efficient organization there outside the political control of any White House, no matter what the party is, for the benefit of the interstate transportation business, and we would encourage that action.

Mr. SHUSTER. Thank you very much.

Thank you, Mr. Chairman.

Mr. RAHALL. Gentleman from Tennessee, Mr. Clement.

Mr. CLEMENT. Yes. Thank you, Mr. Chairman.

Mr. Donohue, I know, and I am somewhat surprised, but not a lot about the change of feelings and maybe being much more forceful about deregulation than ever before. Do you think a lot of that has to do with the fact that we have had a number of hearings previously on partial and total deregulation and this has given the industry an opportunity or time to gear up for a new day and a changing time?

Mr. DONOHUE. Well, I would say this, Congressman; truckers have demonstrated over the last 10 years their agility in the marketplace, and they have had a policy in their association to avoid further deregulation, particularly preemption of the States, and there are still very, very strong feelings in our association.

This was not a cake walk, but they looked at this marketplace and saw what was happening. The States that were deregulating on their own, the changes that are coming at the ICC, the components contained in the 211 legislation, the legislation that is being crafted in the Senate to follow up on the changes in the ICC, and they said: Wait a minute. It is one thing to stay here and maybe oppose or keep a quiet voice. It is another thing to make sure that this is done in an orderly way that protects the interest of all trucking companies.

And for that reason, the agility came to the front and they said: Look, now it is time, as hard as this is, as distasteful this is to some of our States and some of our members, we need to put this association in a position to have an effect about what the final outcome is, and that is why we are here.

Now, the hearings are the place it is happening, but the realities are what is happening in government on the State and the Federal level, and to turn away from that and pretend it is not happening is to stick your head in the sand, and I think there have been occasions when that may have happened in our industry and we don't want to do that again.

Mr. CLEMENT. Thank you.

Mr. RAHALL. The gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Donohue, it is always a pleasure to hear your testimony.

Mr. DONOHUE. Thank you, sir.

Mr. COLLINS. You are—you blow the horn of the trucking industry.

What I hear you saying is that you have come to the reality that you can—you can help construct or craft legislation that will give better utilization of equipment, will increase competition, and yet

no job, no net job loss, and will result in savings to the consumer without sacrificing State regulations pertaining to safety and responsibility, slash fitness. Is that what I hear you say?

Mr. DONOHUE. I think that is an excellent statement, and I would like to associate myself with it, yes, sir.

Mr. COLLINS. Well, I will further say, I am one of those virgin forest products carriers, having experience in it for quite a few years, also having an experience with dealing with deregulating a part of the trucking industry. As a member of the Georgia Forestry Association serving as Chairman of the Transportation Committee for that organization, then following up as a State Senator in Georgia, I was very instrumental in bringing the forest products industry under regulations of the Georgia Public Service Commission. And we did so based on safety, and we did not have any regulations or craft any regulations that pertain to entry, rates or certification, which I believe is exactly what you are talking about here.

Mr. DONOHUE. That is right.

Mr. COLLINS. And we appreciate your testimony.

Thank you.

Thank you, Mr. Chairman.

Mr. DONOHUE. Thank you.

Mr. RAHALL. The gentleman from Minnesota, Mr. Oberstar is recognized.

Mr. OBERSTAR. Thank you, Mr. Chairman.

Sorry, Mr. Donohue. Trying to conduct three things at the same time.

Mr. DONOHUE. I am very familiar with that problem, sir.

Mr. OBERSTAR. I listened very carefully to your testimony, read your prepared statement and just have a few questions: One, are you here to support Federal preemption of State economic regulation of rate and entry?

Mr. DONOHUE. Yes, sir.

Mr. OBERSTAR. All right.

And you would leave insurance, safety, financial fitness, interlining and a few other items to the States?

Mr. DONOHUE. Yes, sir.

Mr. OBERSTAR. You would leave in place the filed-rate doctrine that would include interlining authority at the Federal level at the ICC, what is left of it?

Mr. DONOHUE. Yes. We did discuss just a moment ago that it would be best if—because they are trying to do away with the actual physical filing of all the paper as a cost-cutting measure because of the way it is used, if possible to keep the protections for the industry of classification and antitrust and interlining and so on, but not necessarily require the actual movement of paper.

Mr. OBERSTAR. Should those principles be incorporated into the pending legislation, will there be economic dislocations remaining in the marketplace? Will there be new ones created by the legislation?

And I harken back to what I said earlier this afternoon. In 1980, we went through a very long and painful hearing and markup over deregulation, and when it was all over, we find that in retrospect, there are some things that weren't addressed, maybe because at the time they were too politically difficult to settle or there was not

enough consensus within the industry to settle them, but we have an opportunity now, let us not miss that opportunity. But in saying that, let us not also create some new economic inequity in the marketplace.

Mr. DONOHUE. Mr. Chairman, taking the realities of what is about to happen, what we see moving ahead, if we can work together and if this committee can take the leadership to do the types of things that you have just explained, we will get the best possible result. We are never going to have a perfect situation where everyone is happy in an industry with more than 200,000 companies, in a dynamic changing time in this economy, when shippers, receivers, government and others are continually changing the demands and rules of engagement.

So nobody is ever going to be totally happy. There is no perfect arrangement.

But moving ahead, by adding the matters that we discussed in our testimony to the current legislation, will make things much more orderly, much more effective and much more palatable.

Mr. OBERSTAR. This is what I think we—we ought to seize the moment that has been given to us gratuitously and almost by accident in the current situation.

Finally, would you be amenable to including in such a package a freeze on length and weight and current numbers, 53 feet and excluding the 11 States, grandfathering in the 11 States that——

Mr. DONOHUE. This has been going so well.

Mr. OBERSTAR. I thought you would be certainly amenable to that thought.

Mr. RAHALL. Time for a recess.

Mr. DONOHUE. I would suggest the last time I appeared here, the Secretary of Transportation—no, the Federal Highway Administrator indicated there was a series of studies on this. As you know, we have had a discussion looking at some of the changes, even in your own area of the country. I think that matter ought to receive serious and thoughtful consideration while this matter is moving at breakneck speed.

Mr. OBERSTAR. I did just give it serious, thoughtful consideration.

Mr. DONOHUE. And I am giving it serious and thoughtful worry. Thank you, sir.

Mr. OBERSTAR. Thank you.

Mr. RAHALL. Do any other Members have questions?

Tom, thank you for being with us. You are excused.

Mr. DONOHUE. Thank you very much, sir.

Mr. RAHALL. Before we hear from our next panel, the subcommittee is going to have to take a short 10 minute recess to go over and answer a roll call vote.

But I would ask Mr. Smith and Mr. Rogers to be prepared as soon as we return in approximately 10 minutes.

[Recess.]

Mr. RAHALL. The subcommittee will resume its sitting.

The subcommittee will now hear from a panel consisting of three individuals. Mr. Frederick W. Smith, Chairman, Federal Express Corporation, Memphis, Tennessee. James A. Rogers, Vice President, Government Affairs, United Parcel Service, Washington, DC.

Because of scheduling conflicts, we are going to take Mr. Drew Lewis, from the next panel, and include him on this panel. Mr. Drew Lewis, Chairman, Union Pacific Corporation, Bethlehem, Pennsylvania, on behalf of Overnite Trucking.

Gentlemen, we welcome you to the subcommittee. We appreciate your patience in being with us. And we have your prepared testimonies, which will be made part of the record as if actually read. You may proceed in the order and manner you desire.

TESTIMONY OF DREW LEWIS, CHAIRMAN, UNION PACIFIC CORPORATION, ON BEHALF OF OVERNITE TRUCKING AND SKYWAY FREIGHT; FREDERICK W. SMITH, CHAIRMAN, AND CEO, FEDERAL EXPRESS CORPORATION; AND JAMES A. ROGERS, VICE PRESIDENT, GOVERNMENT AFFAIRS, UNITED PARCEL SERVICE

Mr. LEWIS. Congressman, first of all, it is a little embarrassing for me to preempt two of my largest customers who are on both sides of me. But I do appreciate your permitting me to do this. I have to be at a board meeting, an analyst meeting, and an earnings release tomorrow. I have to be back in New York for a dinner tonight.

You have my testimony. What I would like to do is make that part of the record and not read it. I think you can read it faster than I can say it.

Mr. RAHALL. All testimony will be made a part of the record.

Mr. LEWIS. I guess all I have to say in very simple terms—and I am going to do this in less than five or 10 minutes—I think this bill makes a lot of sense. I have been around this issue for, I guess, 12 to 14 years, and probably even before that. And I felt at that time that deregulation made sense. It has made all of our transportation companies better. I think it created more problems in aviation than any other industry.

But nonetheless, I think your committee should do this. I think we should let everybody in, as Tom Donahue said. I think we should make it an even playing field. Everybody should be in the same position. I don't think we should have restrictions in terms of weights, which Fred isn't going to agree with me on and maybe UPS won't either.

If we are going to deregulate, we should do it, in an even way and let everyone have the same opportunity to compete.

We are prepared, both at—we have two trucking companies—Skyway and Overnite. It makes it so much simpler if we don't have special provisions for any particular kind of company. From a consumer standpoint this makes a lot of sense.

We gave Congressman Shuster from Pennsylvania, where I am from, a map. I don't know whether you talked about it this morning or not. Essentially, we are the fourth largest trucking company in America yet we can't ship from Richmond, Virginia, where our main office is, to Alexandria without going into Landover, Maryland, and then shipping back.

We opened up a shop in Manassas. Now the State requires us to go there and not Landover, Md., so we are precluded from using the interstate shipment option to serve Alexandria. The bottom line

is that this is not good for consumers I am looking at it also in terms of a global economy.

Union Pacific includes a railroad and two trucking companies. We are very dependent on shipments coming in from the Far East and from Europe. It just makes no sense to allow intrastate control.

The questions I got from Congressman Oberstar the other day when we met is what happens to the little guy?

We don't compete with the little guy. We do 35,000 transactions a day, probably about a tenth of what UPS does. I don't know how many you have Fred. But the point is, we really do a lot of transactions. It makes no sense for us to be inconvenienced by having to transfer the Richmond intrastate shipment to Alexandria by utilizing Landover so the shipment can become an interstate shipment. Complete intrastate deregulation is going to make competitive goods even more competitive. This is long overdue. I supported deregulation 12 years ago when I was Secretary of Transportation. I never thought I would be in the trucking business, but I ended up in the trucking business and now I'm back here supporting trucking deregulation again. I am pleased to be here to testify.

This committee should support deregulation.

I want to just address two or three other issues.

First of all, in terms of safety, let the states continue to regulate. I can't speak for my colleagues to the left and right, but whatever the State wants, we will do. We are for safety. Safety makes money for a corporation. So I am delighted to comply with that.

I am not concerned about the little guys. I say that in the sense that large truckers with big overhead can compete with them. Additionally, we often serve different types of customers with very different demands. This is a bill that is long overdue. I don't think it is a partisan bill. I don't think it is an anti-Teamster bill. I don't think it is a Federal Express, UPS, Union Pacific bill.

It is a bill that makes sense, and we should do it. And we probably should have done it a long while ago. All of us who are in the transportation business are doing a heck of a lot better than we did when we were regulated. And I think I was the first Secretary of Transportation to try to initiate the Staggers Act. Deregulation has created some problems in aviation, but that is a different ball game. I know you are upset, Nick about the fact that this bill is attached to an aviation bill, but it still makes sense.

With that, I thank you for permitting me to preempt my colleagues here, and thank you.

Mr. RAHALL. Thank you, Mr. Lewis. I appreciate your testimony.

I understand you are on a time schedule and need to leave quickly, so very quickly: as I understand your testimony, you would have no problem if we were to amend Section 211 to provide for all motor carriers?

Mr. LEWIS. I think deregulation should be across-the-board. You may hear different from the people to the left and right. I think this thing should be across-the-board and everybody should have the same opportunity and be on the same field.

I agree with Tom Donohue, and I haven't agreed with him for years.

Mr. RAHALL. I will recognize the gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. I want to thank you very much for taking the time to testify. We appreciate your support from the trucking end of the industry to the railroad. There is a lot of revolution occurring in the transportation sector, and I guess this is part of it. And hopefully we can take the advice of Tom Donohue to heart and provide some leadership as this change occurs.

Mr. LEWIS. Thank you, Tim.

I think you are right. We are going to end up with deregulation. It is just a matter of when we recognize the facts.

Bud, give me a softball, would you?

Mr. RAHALL. The gentleman from Tennessee, Mr. Clement. We are questioning Mr. Lewis out of order because he is on a time schedule.

Mr. CLEMENT. No, thank you.

Mr. RAHALL. The gentleman from California, Mr. Baker.

Mr. BAKER. I worked in California for 12 years with Wayne Horouichi. He sends his best. The halls reverberate with stories of you rolling your sleeves up in markups and telling us how bills would affect the industry. We respect what you say and thank you for being here.

Mr. RAHALL. The gentleman from Georgia?

Mr. COLLINS. No questions.

Mr. RAHALL. Thank you.

Do you have a comment?

Mr. LEWIS. I was going to make another smart remark. I won't do it. Thank you, and I really apologize for doing it this way. But I got caught between meetings.

Mr. RAHALL. At least it will be good news you report to the board and shareholders tonight.

Mr. LEWIS. And if these guys disagree with me, they are wrong. Right, Fred?

Mr. SMITH. Whatever you say, Mr. Secretary.

Mr. RAHALL. Mr. Smith, Mr. Rogers. We welcome you to the subcommittee.

Fred, do you want to go first?

Mr. SMITH. All right. Mr. Chairman, first of all, on behalf of the 100,000 men and women who work for Federal Express, we appreciate having the opportunity to appear before this committee to talk about legislation that is extremely important to our company, our customers, and our employees. We strongly support this legislation.

We have prepared written testimony which we have submitted for the record, and if it is all right with you, I would like to just talk briefly about two things, and then obviously I will be happy to answer questions or you can have UPS's position and ask us both questions, whatever you want is fine with me.

The first thing I would like to do is talk just a moment about our company, because I think one of the problems that we have repeatedly had in dealing with this issue is to talk about modes rather than markets, and to confuse some terminology.

So I think it is important that you understand just a few things about our company, and then I would like to talk about our experience with regulation.

First of all, as I mentioned to you, Federal Express employs about 100,000 people, and our best estimate is there is about a three-to-one ratio of people that are providing goods and services to our company, and if you take a family ratio of maybe two on top of that, you quickly come up with the mathematics that there are someplace around 800,000 people who one way or another are heavily dependent on Federal Express's operations.

We transport about 2.2 million shipments a day in the U.S. economy, and 187 countries around the world. We operate 456 aircraft, which of course makes us one of the largest air carriers in the world, but we are an intermodal express company. By that I mean our system is built around core aviation technology and systems, and in addition to our aircraft we operate a vehicular fleet in excess of 30,000 vehicles. By common definition we are certainly a trucker as opposed to an air carrier.

Our operation is to move documents and freight on an express basis, and by that I mean items that must be moved fast, they must be moved with a time-certain delivery commitment, and they must be moved with a high information content. People want us to keep custodial control of their items, which means we must track and trace it. We must be able to identify who shipped the item, what the shipper's reference number was, what their invoice number was, things of that nature, all of which, of course, don't apply, for instance, to mail or to traditional parcel post or traditional freight services.

So this type of express operation has become an exceedingly important part of the national and international commerce. In fact, I would submit to you that our express operations and those that are conducted in a similar manner like our able competitors at UPS and their next-day air and two-day air and three-day select modes, are essential transportation services for the sectors which we serve: computers, electronics, pharmaceuticals, aerospace, intellectual property providers, and so forth.

So this issue over the years has been festering since the late part of the 1970s, and I would like to point out to you that Federal Express is unequivocally a child of deregulation.

In 1972, the Civil Aeronautics Board in essence deregulated the controls they had placed on small aircraft operations, and allowed us to go into business. In 1977, the Congress, this committee, Chairman Anderson and others, deregulated all cargo air transportation. The following year they deregulated the entire air carrier industry. In 1980, the Congress deregulated interstate motor carrier operations.

Over that period of time, Federal Express grew from a very small entrepreneurial carrier to one today whose annualized revenues are in excess of $9 billion.

Now, I wish I could say that the reason we now carry $2.2 million shipments a day and have all these assets and employees is because of the wise and prescient management. But the facts of the matter are, as the famous American philosopher Pogo once said, "If

you want to be a great leader, find a big parade and run in front of it." That is what we have done.

We have been providing services which are essential for the businesses that I mentioned to you. So people that say that they have not seen good things out of the deregulation efforts over the last 15 years certainly don't look at our industry. And there are vast differences between our industry and the banking industry. There are vast differences between our industry and the passenger-carrying business.

But I can say unequivocally, both from our own experience and from being a participant in the business of moving goods for many years now, that the deregulation that was outlined in my previous remarks has been of universal public good.

Obviously the free play of a capitalistic market meant there are winners and losers, no question about that. But we have certainly created many tens of thousands of good, high-paying jobs, with excellent benefits. We are very proud of the fact that a famous book, The 100 Best Companies to Work For in America, includes not only Fed Ex in its top 100 but in the top 10 employers in this country.

So to equate deregulation and particularly this type of deregulation with anything that is anti-job or anti-employee, I think is certainly not correct as it applies to us. We of course won an important court victory in the ninth circuit on the basis of the Federal Aviation Act of 1978, and the Interstate Motor Carrier Act of 1980, on the basis that Congress intended to set up integrated intermodal express companies like Fed Ex, and we have as a result of that been able to make our operations more efficient.

Our belief is that the remaining vestiges of regulation at the State level is not in the public interest. And more importantly, it is an infringement not on any sort of States' rights, but on the free flow of interstate and international commerce. Because the facts of the matter is, there is no intrastate commerce anymore. Maybe there was when Daniel Boone was living in Tennessee, when he made something in Knoxville and dragged it over to Memphis and it was produced wholly by Tennesseans with Tennessee materials. But all of the goods that are moved on the highways and the airways in the United States today are interstate commerce.

The ICC, of course, has recognized that and has begun to administratively deregulate this process in certain places, such as in Texas where they preempted shipments which are moved into the State and destined to be moved further. They have classified those as interstate in nature.

So we believe that the bill as it affects integrated air ground express operations such as ours is certainly something that needs to be addressed to clarify the disparities that remain because of the ninth circuit court decision that we got, have achieved. And secondarily, we support broadening the Federal preemption of State regulation to any level that this committee and this Congress sees fit, because it is good public policy, in our opinion.

I will be happy to defer to UPS or answer questions, whatever you want, Mr. Chairman. Again, we appreciate being invited up here.

Mr. RAHALL. We will hear from Mr. Rogers now. At least for today, move over one more chair.

Mr. SMITH. Let me cover up my customer list here.

Mr. ROGERS. No need for him to cover it up. It is the same as ours.

I certainly appreciate the opportunity to come before you and talk to you about Section 211. I have one small disagreement with Mr. Perrucci that I want to get on the record very early. Mr. Perrucci said that UPS does not need help from its friends in Congress. I strongly disagree with that. UPS needs help from its friends in Congress today and tomorrow.

Earlier, Tom Donohue mentioned we are going to talk about changes and I think it is very fair for me to come to talk to you about the changes at UPS since 1980. Mr. Perrucci talked about the fact he came with UPS in 1966. He thought they served 12 States. I came with them in 1968. I think they served probably about 20 States at that time.

One of the most important changes in that 1980 act that this committee passed was a change that stopped the Interstate Commerce Commission from restricting certificateed carriers from handling shipments that had a prior or subsequent movement by air. UPS had at that time, in addition to the regular UPS companies, an air freight forwarder. And we could not operate that forwarder over a very large portion of the United States, because of those ICC restrictions.

When the 1980 act became law, those restrictions went out. The bill was signed in the Rose Garden, and I still have a picture of Chairman Mineta and Bud Shuster looking over my shoulder from the Rose Garden, hanging on my wall. And we started on August 15th with a nationwide air freight forwarder operation, second-day service.

It was a pretty good success, but then we discovered that we were having problems really assuring people of second-day delivery. We were having a lot of problems getting dependable airlift from the airlines we were dealing with. We found out there were some 727 quick change planes that were available on the market, and we bought these planes, and had other airlines fly them for us so we would have more dependable lift for our system. We painted them white in case we had to get rid of them a hurry if this didn't work. And we went forward from there.

By the end of the year we painted them brown and bought a lot more of them. It has been quite an experience since then.

In 1983, we began to offer next-day service to particular city pairs. In 1985 we expanded that next-day service to the whole country. And in 1988, we ended contractor operation of our airplanes and operated themselves as a UPS airline.

How much has this change meant inside UPS? In 1980, the biggest item on our balance sheet was our trucks, $600 million worth. Today, it is $2.6 billion dollars worth of vehicles.

In 1980, we had no slot on our balance sheet for airplanes. Today, the biggest item on our balance sheet is $2.9 billion worth of airplanes. In addition to that, there are $4.2 billion more coming on firm order between now and 2002.

In 1980, we had 111,000 employees in the United States. Today, we have 268,000. My statement says 250,000, but the first thing I saw when I came to the office this morning was a statement in

the Journal of Commerce, my PR department got ahead of me, tried to make a liar of me, and said we have 268. I was going to be mad at them but I decided I would be just as happy to say I was very happy we added 23,000 American jobs since October 1st, 1993.

All of those jobs, by the way, have full health care.

After the 1980 bill was passed, there was an equilibrium of sorts in our industry. The ICC regulated very lightly. The States continued with their regulation, some heavy, some light. The equilibrium ended, as Mr. Smith just told us, with the lawsuit they were very successful in winning in California in 1991.

An airline that operated trucks was deregulated while a trucking company that operated an airline was still regulated by all the States. After a lot of work on our part, the public perception was that UPS and Fed Ex were competitors. They didn't believe that in the beginning. Certainly we perceived Federal Express as a competitor.

Using our heads, we decided we would work together on this issue, and working with Congressman Clement in the last Congress and Congressman Upton, we did get H.R. 3221 introduced. We got over 185 cosponsors, including half the Members of this committee, but we did run out of time.

Some asked, Why did you try and do this on an aviation bill in the Senate? With $3 billion in airplanes on hand, and more on the way, where else should we be?

The ninth circuit decision which we mentioned was an interpretation of the preemption section of the Federal Aviation Act. This preemption section is the one which Section 211 amends now.

How big a problem is State regulation for a company like UPS? It is a big problem. If we wish to change our rates, we have to file with the 38 States that still have regulation over UPS and air-to-ground intermodal carriers. There are 41 States that still have regulation of some sort, but California, Texas, and Kentucky have stopped regulating air ground intermodal carriers.

And I hope I am proved correct. If we want to offer our customers a new service, we have to go to 38 PUCs in 38 different States to get them to approve the service. Every time we file one of these applications, we are at risk that they might order us to present more evidence at a hearing, block service until they make a decision. We end up with a checker board map of States where some we can offer service, some we can't, and we confuse ourselves and we very much confuse our shippers.

Let me give you a few recent examples of problems we are having with regulation. In 1993, 13 States blocked a January increase in UPS rates. In six of those States, the only complaint about the rate increase was from an out-of-State shipper who could only have been shipping to that State in interstate commerce.

Nevertheless, they held up the application. The delay in securing those increases cost UPS almost $9 million that we will never recover. This year, Colorado has blocked the UPS rate increase on the complaint of one shipper who ships about six packages a day. That is one shipper out of 19,000 shippers.

Colorado has to act on this complaint within 210 days. At an open meeting last week, one of the commissioners complained that

210 days wasn't enough time. The North Carolina Utilities Commission, acting on its own motion, also suspended a rate increase this year. Those two rate suspensions, Colorado and North Carolina, have cost UPS $1.8 million in lost revenue, and additional hundreds of thousands of dollars in legal fees and costs of all sort.

We have learned a lot about serving our customers, a great deal from the man at my right. Our services used to be defined by Federal regulators. Now they are created in response to customer needs.

Prior to 1980, it used to be enough that we delivered packages on time and undamaged. That is all we had to do to be considered good. Today our customers demand much more from us. We offer many different levels of service: next-day air, three-day select, hundred weight, and many others. In addition to transportation services, we offer information about their shipments.

We spent billions of dollars going from a company that kept track of tens of millions of shipments on paper to one that is paperless. We share this information with our customers. They can get information on their delivery within minutes of delivery, no matter where it takes place.

The 1980 act gave us the freedom to make these changes. When we have removed barriers in the past, the results have been more services being offered, more people being served and more jobs for Americans. And I think that will be the case now.

I want to mention that there are still some competitors out there that are surprised that competition works. They believed they could raise the weights and prices on minimum shipments and nobody would notice. Shippers noticed. We noticed. We now service that market for light-weight shipments with our hundred weight service.

The same carriers are now saying they should be included as intermodal cargo air carriers because, if not, they can't compete with UPS. I will make it clear. We are not saying that anybody else shouldn't be as deregulated as we are. You can go as far as you want in deregulating. But we do object to UPS being painted as the reason why somebody else should be deregulated when it is they who ignore the market.

The market worked exactly as it should and the service improved and the price went down.

I want to say a few things about safety, although I hadn't intended to. We want to keep a uniform safety system. Remember, we are a country of 50 States, and we operate in all 50 States. And we have to have uniformity in the safety regulations that apply to it. You can't go and have new barriers set up, because States take on different safety standards.

I believe that we should give the States all the encouragement possible to involve themselves in enforcement. But we do need to have a flat set of rules that we can enforce.

In addition, we do want to remember that for most of us in this business, all freight, intrastate and interstate, is commingled in the same vehicles. It is all moving together anyway. If you can inspect us and stop us because of interstate movements and what we are doing in the States, you can inspect us for intrastate movements.

The shipments are completely commingled. This one is intrastate, this one is interstate. And the truck is full of both kinds.

I think the ninth circuit decision has created a lot of uncertainty for us in this business, and Section 211 certainly ends that uncertainty. UPS is willing to serve the public. We are certainly willing to compete with the rest of the industry.

We believe Section 211 provides real simplification of the regulatory structure, and this will benefit both shippers and carriers and ultimately the customer. We believe that it provides greater carrier flexibility to respond to market forces.

And most importantly, the elimination of conflicting State and regulatory standards will give our industry—will allow our industry to give the shipping public the opportunity to benefit from reduced costs.

Thank you very much and I will be happy to answer any questions that you have.

Mr. RAHALL. Thank you, gentlemen, for your testimony.

Let me be rather blunt in my first question and ask both of you, is the basic issue of concern to you gentlemen the State regulation of your package express activities, or does your concern transcend this element of your business?

Let me explain why I ask this. I ask the question within the context of what we will hear from some of the opponents of 211 from whom we will be hearing before the day is out, that this is a thinly disguised effort to gain an unfair competitive advantage over the traditional carriers.

In other words, this legislation would facilitate your entry and expansion into providing transportation services for shipments that have been traditionally handled by LTL carriers. For example, in the pages of one corporate magazine, I saw that one of the major LTL's named UPS, in fact, UPS was mentioned more times than that company's name. And it was not mentioned kindly.

Mr. ROGERS. I think I saw the same magazine. And among the ways they mentioned our name was that we had different provisions in our labor contracts with the Teamsters. They acted as if we got those provisions yesterday.

But the fact is that those provisions are 40 years old. And we fought for them 40 years ago and we fought to keep them for 40 years and now all of a sudden they make us very efficient and they are crying about how efficient we are. I can't fix that for them. They have to fix that on their own.

More importantly, our business—I don't know how you can define our business anymore. Mr. Smith just did a good job of defining our business as selling services to people who need things when they need them and want to know that somebody is going to bring them at that time. To call us a package business anymore or a package express business, I can't even say to that, because I stopped saying "never" in 1979. I knew in 1979 UPS would never buy a plane. And I had to stop. They made a liar out of me then. I am not giving them another chance.

Mr. SMITH. Well, Mr. Chairman, the terminology you used there, a thinly disguised attempt to get a competitive advantage, I don't know how much more overt and open we could be on anything. We have been up here in the halls of Congress for many years espous-

ing Federal preemption. As I mentioned a moment ago, we carry documents, packages, and freight. What determines if they are express is whether the shipper needs express service.

There are lots of things in freight that aren't express. There are lots of documents that are not express. I don't know how we would—could be accused of wanting an unfair competitive advantage since we have repeatedly said that the best public policy is for the Federal Government to preempt States' economic regulation of what is international and interstate commerce.

Now, most of these people that object to this, what they really want is intrastate regulations which protect them from competition, not that there is somebody who is going to get an unfair advantage over them. And to the extent we can get an unfair advantage over a company by using regulation, we have never attempted to do that, ever. We have never asked the Federal Government to allow us to do something and not allow everybody else that wants to do it to do it too.

Now, that is not just because we are good corporate citizens—I hope we are—but it is because at the end of the day, the marketplace is going to be the final arbitrator of who succeeds and who doesn't succeed. And if you exist behind a wall of ill-thought-out regulation, then you will invariably allow for your costs and your services to deviate from what the market actually wants.

And that, in the last analysis, is what is painful about deregulation. You see it in the airline industry today. You have carriers whose costs have become higher than what people are willing to pay for the product. And I don't know that the Federal Government can protect providers from that.

I was talking to somebody before this meeting. One of the real impetuses, people forget this, for deregulation in this country came from these, eyeglasses. Years ago, eyeglasses were a regulated commodity. And each State had its own regulations that applied to the sale of eyeglasses.

And I don't remember on the House side, but I remember very specifically over on the Senate side, it was Senator Kennedy that got to looking into this and said, This is ridiculous. This is essentially state interference in what is interstate trade, and all of those rules came down, and everybody knows what the results were. Now you can go get eyeglasses in an hour and it doesn't cost you very much.

My God, without that Federal preemption, eyeglasses would cost a thousand dollars apiece today. So to the extent somebody wants to hide behind State regulations to prevent more efficient providers, if that is what they are talking about, sure, we are going to go in there and compete for anything our customers want us to carry, but we certainly don't want to restrict it in any way to prevent people from being able to compete against us.

Mr. RAHALL. The Senate provision prevents regulation of rates, routes and services. Both of you gentlemen have told us your companies can service every address in the United States. Therefore, State entry regulation is certainly not a problem for you. So that leaves the State regulation of rates and services on the table.

As it pertains to rates, what do you find to be the major problem or the most objectionable: having to file rates or having to justify that they are reasonable?

Mr. SMITH. Why don't I answer first, because I think our answer would be shorter than UPS's.

We have taken the position repeatedly that as an air carrier we are not subject to State economic regulation of our rates. That is why we went to court against the California PUC and won and had it affirmed by the ninth circuit and then it went to the Supreme Court, who did not issue a writ of cert, didn't hear it, they let it stand. And in certain States, to this day, where we think the aggressive regulation mentality remains, you heard Tom Donahue talk about there were sort of three groups, R&D regulationists, people who have sort of got a regulation but they wink at it, they don't pay any attention, and then there are some real committed folks that see this as a real important mission.

Now, in those States—a good example of that being Indiana. We put a hub in Indiana because the State of Indiana deregulated. Then at the State level—and we went in and invested all kinds of money. And then they came back in and the State legislature reregulated.

So what we do in those situations is we don't move traffic on the ground inside that State jurisdiction. We move it outside of the State. And you heard Drew Lewis talking about that Overnite couldn't move something between Richmond and Alexandria and they moved it through their hub in Maryland. And that is exactly what we do; we move it outside the State in our system. It costs us a lot of money to do that. But it is far less money than it would cost us to try to meet all of these various regulations.

We put it in the testimony, but just to reiterate it, in the State of California, our money-back guarantee, until it was deregulated, was illegal. It was an illegal rebate. The State of California required some enormous number of multiple forms to be filed when a claim was filed. We pay claims over the telephone with no paperwork at all, 95 percent of them.

I could go on and on, but our system is an integrated system designed to operate on a national and international level. And to have it balkanized by regulatory agencies who are dealing with requirements that were put in there, when literally commerce was conducted mainly with horses and wagons, is something we could never do. That is why we took the California PUC to court.

So we have one set of situations. UPS, because of their evolution, has a very different set of circumstances, which I am sure Mr. Rogers can fill you in on.

Mr. ROGERS. We have a lot of problems with both the requirement to file, although our tariffs are relatively simple so we weren't filing thousands of pages. We have one rate base guide which is simply nothing but a zip code directory, and we correct that every couple of years and file a new one with each State, and the tariffs themselves usually are less than 20 pages.

So I can't say that the actual filing of the tariffs is a lot of problems. But going through the process of having each State set your rate increase out there and throw it up for grabs to the public,

make you file tons of marketing information on an open record, really leaves you in this competitive day and age quite concerned.

It is more in the doing after the fact of filing than the filing. One of the other problems is the ability to change your services. We can't offer hundred weight in those States which we are characterizing as heavy regulator, because when we try in those States, they say, No, no, you have got to come and get an application through and get your certificate changed so you can do that.

So we just don't offer it in that State. We will be carrying packages out of that State under our interstate tariffs in the very same trucks but we won't be carrying packages in that State to another point in that State under that particular set of rules and services.

I think—I hope that answers your question, Mr. Chairman.

Mr. RAHALL. It does. Let me note that some make an argument that UPS has a monopoly already with no State regulation in place, and can basically charge what it wants.

For example, the Transportation Lawyers Association writes, "Contention that these two carriers are seeking a level playing field is similarly ludicrous, as they have for many years created their own playing fields and manifestly dominated them. UPS, which enjoyed a $1 billion increase in business in 1993, is an aggressive competitor and regulates the playing field and its competition. Fed Ex has even less justification for the legislation to preempt State regulation. It is reported the bill, if passed, will ensure Fed Ex another appellate court can never overrule the Ninth U.S. Circuit 1991 ruling. No one directly or indirectly involved in transportation, nor does Fed Ex, believe any court will overrule that decision."

May I have your response, gentlemen?

Mr. ROGERS. Let me try to do that first. First, I think that the Transportation Lawyers Association used to have the greenest field in Washington until 1980, and they are still regretting the fact that that field dried up.

The second thing is that I have seen the 19 arguments that the transportation lawyers have put out as reasons not to pass Section 211, and they are identically the same reasons they put out not to pass deregulation in 1980. They haven't improved much with time.

You know, if we were such a great monopoly, Joe Clapp would never have gotten away with starting RPS and knocking our block off and creating a billion-dollar company in our shadow in a couple of years. This area is so competitive that on a day-to-day basis we don't know who is going to come and who is going to get us, and we better be talking to our customers every single day to find out whether they are happy and whether we are doing what they want done.

Mr. SMITH. Well, of course, I don't know how the gentleman—I think I read that. It was a letter to the editor in the Journal of Commerce or something?

Mr. RAHALL. This was a letter directly to us.

Mr. SMITH. There was a similar letter in one of the trade publications. Obviously I take a bit of umbrage for this gentleman or lady or whoever it was telling us how we think about things, and we don't think there is any possibility that the ninth circuit court decision is subject to attack.

The facts of the matter are that right as we sit here we are engaged in regulatory disputes with our home State where we are the largest employer in the State. Mr. Bissell, who came up here earlier and represented the NARUC or one of the State regulators, when he was on the public service commission along with the distinguished Member of this committee, Congressman Clement, took the position that they could regulate Federal Express if something moved inside the State wholly on the ground. That has never been resolved.

So whenever there is a small difference in facts, we are subject to having to litigate that or go into a regulatory forum. I mentioned the Indiana situation a few moments ago.

They have been extraordinarily aggressive in Indiana, at one point accusing us of surreptitiously moving things inside the State by ground, which we don't do. We route it outside the State, as I just mentioned to you.

So of this one-third aggressive regulators, which to borrow Tom Donahue's phrase, believe me, they are very alive and well with budgets and not a whole hell of a lot, it appears to me, much to do except come and try it assert these principles. So it is a very big issue for us.

We thought the Congress had resolved it in 1978. We thought we resolved it when we won the California PUC case. But I think that it needs to be resolved by the Congress because, again, Mr. Chairman, this is not an issue of States' rights; this is interstate and international commerce. And the fact that it happens to move between one point in a State and another, is simply a continuation of a distribution function that took place when that item was moved inside the State in whole or in part utilizing interstate goods and interstate transportation and often, today, international transportation.

So just as the Federal Government and the Federal Trade Commission started looking at restrictions on the sales of eyeglasses, and just as the Federal Government used, quite appropriately, the interstate commerce activities that took place inside a State to assert jurisdiction on the civil rights of the citizens of this country, the Congress needs to step in here and preempt States from interfering in what is interstate and international commerce.

So I disagree very much with the gentleman that made that letter, and I am sure he has got his own point of view, but that is Federal Express's point of view, and we do not feel the way he stated it in that letter.

Mr. RAHALL. Let me continue, if I might, to reach into our subcommittee's mail bag. Despite what some may think, we do read our mail occasionally around here. Besides the large amount of constituent mail received in opposition to Section 211, we also received a letter from Columbia House in opposition to Section 211. There is another one from Chadwick's of Boston, the—and I quote—"original off-price fashion catalogue."

Here is one from Financial Stationers Association. They state, "Millions of check packages are shipped by our member companies to our bank customers by UPS. If the Senate bill becomes law, businesses and consumers who rely on intrastate carriers would

have no opportunity to focus public attention on rate increases, many of which seem arbitrary."

Here is another one from the Sportsman Guide of St. Paul, Minnesota. We could go on and on. The list does continue. In fact, the only letter I received from an individual shipper who does not completely trash Section 211 is from Royal Crown Cola of Columbus, Georgia. Their main reason for writing was to ask that we include the private fleet bill as well.

So what I am getting at here, gentlemen, is that these shippers, some of whom are your customers, obviously, certainly do not think this legislation would benefit them. Why do you suppose we are getting some reaction like that?

Mr. ROGERS. I can give you a very good reason. I am glad Chairman Mineta is leaving. He used to glaze over when I had to talk to him about postal issues 20 years ago, and I used to beat up poor Paul Schoellhamer there, when he had hair, on postal issues.

What you are seeing is a postal issue being dumped into your lap in this committee. Those shippers are very unhappy that United Parcel Service continues to oppose things done at the Postal Rate Commission by the U.S. Postal Service.

We believe the rates the U.S. Postal Service charges in competitive areas with companies like UPS and Fed Ex are drastically subsidized from the monopoly. And the U.S. Postal Service is getting plenty of knocks these days. They hit a triple play in the Washington Post where they got the front-page story in the magazine, the negative editorial, and Herblock added insult to injury with the cartoon. Today they are on the front pages again.

The shippers complaining about UPS in this particular instance are shippers who are upset that UPS is not going along with their, quote, "settlement," end of quote, with the U.S. Postal Service. We believe that the U.S. Postal Service has acted against the interests of the Postal Service, perhaps in favor of these mailers, but we do not believe it is in the active interest of the people in the country.

And this is a very large problem. We are receiving pressure directly from these shippers who are complaining that although they are our big customers, we shouldn't be fooling around with the rates on different classes of mail, that we should be going along with this settlement.

We fought the U.S. Postal Service about these issues for 24 years. We are not going to stop fighting them now. We believe there the U.S. Postal Service, with a $50 billion business, an absolute monopoly over 85 percent of its mail, and an armed police force to enforce that monopoly, is a very ferocious competitor and we will fight them.

Mr. SMITH. I would echo what Mr. Rogers said. The problem with regulation in the transportation sector in this country, certainly in the type we provide is highly competitive, and generally when someone, a customer speaks for regulation, it is because they think they can use the regulatory process to shift their costs on to someone else's back, and where they enjoy a benefit. Now, when transportation markets are deregulated, then market forces take over.

And if the characteristics of that shipper lend themselves to a strong buying power or what have you, they can almost invariably improve their distribution system. And I would say to these folks

that I think, knowing their individual situation, they are very misguided in this. The best thing they can do is to have a vibrant deregulated transportation sector with a number of carriers that they can select to provide services, because once you have that, if you have an RPS and a Fed Ex and a UPS and the Postal Service itself and an Airborne and so forth, that far better than any kind of a regulatory system is going to lead to the maximum amount of efficiency and the best features and the lowest rate.

It doesn't mean they are not going to be somebody that is going to be disadvantaged by that deregulation. Certainly in air passenger deregulation, one of the things that happened is that smaller communities who were being heavily subsidized by more dense traffic lanes and travelers went away.

The same thing exactly happened in the telecommunications deregulation. A residential customer that had been heavily subsidized by business telecommunications users, those things tended over a brief period of time to right themselves.

But after that period of adjustment, I think it is safe to say that the country has benefitted enormously from the interstate transportation deregulation of 1980, certainly from telecommunications deregulation. My God, it is producing, you know, huge benefits. And I would submit it is not the time or the forum to do it. That has also been the case in air passenger transportation.

So I think that is their problem, is they have a particular position, and they don't want to go through the dislocation of losing that position.

Mr. RAHALL. Thank you, gentlemen.

Before I recognize the gentleman from Wisconsin, I guess the final ultimate irony is a letter we received from Quicksilver Messenger Service, Chicago, Illinois, in opposition to the UPS bill, mailed by Fed Ex.

Mr. ROGERS. Shipped by Fed Ex, not mailed.

Mr. RAHALL. I stand corrected. Shipped by Fed Ex.

The gentleman from Wisconsin.

Mr. PETRI. Thank you.

I think the Chairman covered most of what I was going to touch on. But I wanted to give you a chance to respond a little more directly to one or two questions he raised. There has been an awful lot of revolution or evolution, or both, in your industry.

Some people made fun of you, Mr. Smith, when you first tried to sell them on it. They are not making fun anymore. UPS thought it would never own airplanes and it has changed radically.

There are people who say that if we take this step with 211, that the result in a few years will be that the two of you will dominate your segment of shipments to the exclusion of others, and that is basically anticompetitive.

I don't know where DHL is today, I think there are some other people lurking around, including possibly the Postal Service itself, if we end up going in the direction that Britain is trying to go and that Holland has already gone with its formerly government postal service.

But could you outline basically how you think things will evolve in your industry or are likely to evolve over the next few years if the hand of State regulation is relaxed?

Mr. SMITH. Yes. Well, first of all, the—again, let me make sure that I restate one point I made before. We currently serve every address in the country. The matter at hand here is a matter of efficiency. It is not a matter of the fact that State regulation remaining or being eliminated is a mortal threat to Federal Express.

There is one constant in the history of transportation, and I have been in transportation my entire adult life other than the service in the Marine Corps. My father was in the transportation business, my grandfather before that, and I have tried to study transportation in recorded history and I have gotten as far back as the Phoenicians and I can tell you one thing about it. I don't mean to be pedantic in this way, that whenever one thinks that they have a lock on a transportation market and allow their services to become nonresponsive to the market or they allow their costs to become too high, there is always someone that comes in from left field that changes the rules of the game.

My good friend, John Emery, whom I like very much, certainly we did that to him. I think that Jim Rogers would also tell you that they changed the rules of the game on the Postal Service and we changed the rules of the game on them to some degree and Airborne has done something still different and RPS, which didn't exist, what, five or six years ago, has built a billion-dollar business. So I think there is no, that I know of, example of that in history.

The market is the best regulator of good, vibrant transportation services, and when it becomes regulated, then there are all types of perversions that happen that create a problem. One of the things that I am sure Drew Lewis could have commented upon, the railroads were supposedly regulated in the 19th Century for the public interest.

Well, anybody that knows the history of that knows that that is basically nonsense. They were regulated because all these wild capitalists couldn't control themselves and they wanted a nice little regulated oligarchy that they could make a lot of money in. They happened to exploit the natural intention of the farmers, the grains and the railroads, but traditionally, transportation regulation, other than when a new technology comes along, the way air transport was in the early days, has been used as much as a shield as it has a sword.

So I think that those concerns are ill-founded based on the historical record in this country and elsewhere, that we would be able to maintain any sort of monopolistic or oligopoly-type of pricing or service environment.

I wish that I could say that would work because certainly that would be our objective to be as big and profitable as we can, but the facts of the matter are that the—as long as the market is open for people to enter, there are always going to be entrepreneurs that are going to come in with a different slant, a different idea and are going to keep that marketplace honest.

Mr. ROGERS. I would like to address, Mr. Petri, you mentioned Airborne and DHL. They are supportive of this act. They have, I believe, written to the Senate side, but perhaps they need to be reminded that they should also write over here.

I couldn't give you the slightest guess of where United Parcel Service is going to be in a very short period of time, let alone a long

period, vis-a-vis competition and what is happening in the world. The changes in this business are so fast that it just blurs my mind. I don't know what we are going to be really successful at doing two years from now as opposed to what we are doing today.

I don't know whether the world is going to change and our international business will boom or whether the world will turn to crap on us and the international business will go in the wrong direction. Those are risks that we take every day, and I don't know what our business is going to look like in a couple of years as a result of this thing.

I know that we will be able to run it better. I know that we will have happier shippers. I know that we will be faster to respond to the market and I think that is in the public interest. I think that is what the world wants out there.

Mr. RAHALL. Distinguished Chairman of our full committee, Mr. Mineta.

The CHAIR. Thank you very much. Let me ask, first of all, I think I pointed out earlier where we started with the bill in 19—in the 103rd Congress with Fed. Ex. and UPS and RPS and then each time the circle got a little bigger and so now we are at that point where there is maybe, I don't know what number it is, but let's use the figure 5 to 10 percent of the trucking business that is now going to be deregulated—or rather regulated and the rest of it is going to be deregulated.

So I think people have this idea that we have got these very—and you are, very large carriers that are now going to be in this position of being deregulated across the country and this 5 or 10, 12 percent of the trucking industry that is going to be regulated and they feel they are going to be really at a competitive disadvantage because you have—you are large carriers with large assets, deep pockets to be able to go after—to be able to lower your rates and be able to capture the market.

People are very fearful of that scenario and I am wondering how you would respond to that question.

Mr. ROGERS. You have to feel for people in that position because they are facing the unknown. They don't have any idea what is going to happen to them after something that they are familiar with stops being important. But you know, when you talk about small carriers, there are still lots of small carriers in Florida, Wisconsin, Arizona, New Jersey, States that are deregulated that are operating today in that deregulated milieu and doing very well at it.

Now, nobody has gone to ask them what they think the impact of this bill is going to be on them because there isn't any. They are going to be out there doing their thing and they will continue to do it very well. I think that is as important a question as the question about what you do with the people who are facing change who are regulated.

Anybody in this country facing change knows how difficult it is. I mean, the administration is trying to do something with health care and they have scared half the country to death because nobody knows what the change is going to be like and I think you face that here. I don't think it is the biggest obstacle to this bill and I feel very, very concerned for those people that fear change.

Mr. SMITH. Well, I would simply echo that and as I mentioned a few moments before, I mean, I think the problem with carriers who exist under a regulatory shield tend to have the natural tendency to not provide the services exactly the way the customer wants and they tend to have the propensity to let their cost rise above the level that the marketplace wants to pay.

So whenever you then subject carriers that are in that historical position, it is a trauma for them and I can understand their position. But at the end of the day, the marketplace will find a way around a carrier which does not want to—which doesn't do what the customer really wants or at a rate that the customer is willing to pay.

The best example of this, you can go right back to your home State, Mr. Mineta, and as you know, on the border in Nevada up around Reno and Las Vegas are warehouse, after warehouse, after warehouse. Well, those didn't get put there because of the cool climate of Nevada. They got put there because after the 1980 interstate deregulation, people could ship interstate into and out of California for far less money than they could ship intrastate.

In Texarkana, Arkansas, the same thing. A whole slew of warehouses that, from a pure business sense locationally would have been better placed closer to the market in the larger markets inside Texas. And in Louisiana, the same thing.

So over a period of time, the market is going to find a way to adjust to get what it wants. It will move the business outside of the State, it will quit serving the area, the consumers will quit buying the product when the beer gets too expensive or whatever the case may be. So there is no question about it.

When you move from a regulated environment to one that is deregulated, you move from, as Tom Donohue said, having the regulator as your primary customer for your pleadings and what have you to one where the customer tells you where to get off. And I am sure that transition can be painful for some, but it is not good public policy to continue to have thousands and thousands of Federal Express shippers pay more than they should, millions and millions of dollars per year more than they should in order to protect an archaic, regulatory regime which is inappropriate because the traffic is interstate and international in nature.

We are the clipper ships of the computer companies and those companies are cross-subsidizing operators which exist in these regulated States that want to use this regulation to—as a competitive weapon, and it is not in the public interest to continue to do that.

The CHAIR. We have received testimony for the record and this involves a case that your firm is involved in in Colorado, evidently, and there you use the argument, this is the reason we need Section 211. They are using the argument because of your size, because of the protections they need, because of cross-subsidization. This is the reason why we don't need Section 211, and——

Mr. ROGERS. I commented earlier, as you left the room for a moment, that I didn't want your eyes to glaze over when I started talking to you about the post office as I did 20 years ago when you got here.

The shipper in Colorado that you are describing uses United Parcel Service approximately six times a day, 5 days a week. That

same shipper ships 99.5 percent of its business by the U.S. Postal Service. They are most thoroughly annoyed with the United Parcel Service because we continue to go to the Postal Rate Commission and complain about the fact that the Postal Service monopoly is still being abused in the postal rate setting.

They figured they would teach us a little bit of—they would give us back some of our own medicine. The difference, of course, between UPS and the U.S. Postal Service is that the Postal Service has an absolute monopoly over 85 percent of its business and an armed police force to enforce that monopoly.

I have a monopoly that is about as good as his ability to steal my customers or mine to steal his. We have plenty of competition. We have people that are out there like RPS that can find gold in our shadows so quickly that billion-dollar businesses get built while we watch them. It is not the same situation. I don't believe that a—

The CHAIR. The other carrier, though, has the fear that you are going to take your commercial traffic and subsidize, cross-subsidize with the residential service that they are in and so it is a little different.

Mr. ROGERS. Well, I don't quite understand that. Thirty packages a week does not make a big residential shipper.

The CHAIR. Well, let me ask. Both of you have testified that you are not seeking anything in law that would be an unfair advantage for you as compared to other companies, and yet Section 211, as it is now written, would deregulate you and others, but not everyone. So some in the intrastate trucking business would remain regulated, while you become deregulated in those same markets.

Now, given your testimony that you don't want to—you don't want an unfair advantage over anybody, should we conclude that you have no objection to our rewriting section 211 so long as you end up with preemption of intrastate trucking?

Mr. ROGERS. From my point of view, the answer is, yes, you may rewrite at will, but the important thing about Section 211 is we were able to get Section 211 passed in the Senate. And although I have heard a lot of people today questioning the beauty of that particular section, in the eyes of those of us who had nothing, it looks very beautiful and we hope that any rewriting to further broaden the bill is done with the most judicious hand.

Mr. SMITH. Well, Mr. Chairman, we, again, we would like to state we have no objections whatsoever to anyone having the same competitive rights that we have. We would be very concerned, however, if this opportunity were to pass. This is appropriate in our case because we are at our core a major air carrier. That is the core system that drives our network, and with our fleet of 446 airplanes, I think that puts us at something like the number seven largest air carrier in the world.

In fact, I think it may be on hand or in order the largest assemblage of wide-body airplanes in the world of all air carriers, and so the 211 jurisdiction, if you will, if that is the right term, I am not sure I am right, is appropriate because this is an interference on an integrated intermodal express operation, in our case, and certainly in UPS' case, too, as they have evolved over the last several years.

So we certainly would hate to see this opportunity missed for that, and we—if there needs to be other deregulation activities in another forum, then maybe this could be just a one-step on that journey, but this is something that needs relief. As you know, we have been arguing for this for a long time and so we hope this opportunity won't pass and that this bill is the appropriate vehicle for our language.

The CHAIR. Thank you very, very much.

Mr. ROGERS. I strongly second Mr. Smith's comments.

Mr. RAHALL. The Chair recognizes the gentleman from California, Mr. Baker.

Mr. BAKER. Thank you very much, Mr. Chairman, for holding these hearings especially, and I would like to thank the two gentlemen before us. You are the shiny examples of how competition can improve efficiency and lower cost and I appreciate that you used to have two-day service and overnight service and now it is instant service and it is because you are nipping at each other's heels.

The Federal Government built the canal system in Washington just in time to complete it as the railroads came through and put it out of business, and if we had regulated the railroads from the viewpoint of the canal masters, we would not have the railroad system we have today.

NAFTA has changed the ball game and GATT will change it even more. To think that our foreign competitors are going to watch us take a package from Richmond trying to go out to Northern Virginia by shipping it to Maryland first and we can sit here and watch that kind of regulation and not know that nationwide and internationally we are going to be having our lunches eaten for us.

NAFTA and GATT are going to make the customer first because there is going to be international competition for that customer. Why don't we, instead of looking at the canal masters, why don't we ask the customers, Mr. Chairman and committee, how much do you want to spend for regulation, and ask them in their package the cost of their package, how much would they like to spend to support the Transportation Lawyers Association as part of the cost of moving a package from point A to point B and see the resounding effect you would get from Macy's or from some brokerage house or anyone else who is shipping packages.

Yes, I would love to add $10 or 10 percent on to support the Transportation Lawyers Association and rate fixing and all the rest that goes on.

California, Mr. Chairman, is a monument to overregulation and overtaxation. New Mexico, Arizona, Nevada and Utah are reaping huge rewards in new employees and new businesses because of our overregulation. I would like to thank you for taking them on and I hope this bill passes and I hope it is expanded to all those who want to participate in deregulation, all of the trucking firms that want to be involved, and not go through the wonderful process in California of the PUC and to wait 241 days to adjust your rates while your competitors eat your lunch. This is a good move and I think we ought to do it soon. If you would like to comment, consider that to be Drew Lewis's softball.

Mr. ROGERS. Mr. Baker, I think you speak very well for us. We appreciate it.

Mr. RAHALL. Gentleman from Tennessee wish to comment, Mr. Clement.

Mr. CLEMENT. Mr. Smith, I know when you were in college when you were writing a report about a concept about Federal Express and about—before you ever started the company, but you had an idea for the future. We need to know for the record what grade did you get.

Mr. SMITH. Well, that has been a source of some debate, Congressman Clement, but it has been officially listed as a C and I would like to state for the record that I was extremely happy to get that grade, too.

Mr. CLEMENT. Even though you don't consider Federal Express a C?

Mr. SMITH. No, no, no, not at all.

Mr. CLEMENT. I want you, for the record, to give us some illustrations about how you have to operate now and how cumbersome it is, and, you know, we talk a lot about environmental concerns and how to save energy and how to move toward being energy independent, and yet we have this strangle hold whereby you are having to take some very indirect routes to get where you want to go. And the time and additional cost and all that we have to be confronted with now, so give us some illustrations, some cities and towns that, how you operate now versus how you would operate if this legislation was passed.

Mr. SMITH. Well, a couple of examples that are the situation in our home State of Tennessee. In Tennessee, we actually route certain air packages that should more efficiently go by surface between say Nashville and Memphis. We put them on an airplane. In the case of Indiana, which is a very aggressive regulatory State, we drive things either outside of the State into Illinois to one of our sorting centers there, even though we have an enormous hub in Indianapolis and vehicles going in there every day, which would be more efficiently routed. Those are just two examples. We calculate that we burn about $50 million worth of aviation fuel for no good reason other than to avoid these State regulations.

Obviously, there would be some offset in that with diesel fuel or what have you, but it is a very expensive proposition. I mean, it is measured by many millions of dollars and many tens of millions of dollars of fuel, and I think the same thing would be true of overnight that Mr. Lewis mentioned, some of the routings that they have.

Mr. CLEMENT. Mr. Rogers, I know both you and Mr. Smith have gone on to the record that you don't fear competition. You realize at times you have to adjust to the marketplace and I think you have made it clear, but once again, for the record, both of you agree that, sure, the—or Section 211 is objecting, but you would also support total deregulation where everyone would be on a level playing field.

Mr. ROGERS. Absolutely.

Mr. CLEMENT. Mr. Smith?

Mr. SMITH. We would have no problem with that at all.

Mr. CLEMENT. All right, thank you.

Mr. RAHALL. Gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, sir. Gentlemen, I have enjoyed your comments. You mention the Postal Service and the monopoly and the inefficiency of the Postal Service because of the rules, regulation laws that created the monopoly. I didn't want to leave without giving you a little piece of evidence, by the Postal Service of their inefficiency and some of the rules and regulations and how it cost some additional money or cost the American taxpayer additional money.

As you know, each of us, as a Member of Congress, we receive updates and reports, financial reports from each agency. Just recently, I received a report from the Postal Service on last year's financial status. That report was delivered to my office by private courier.

I wrote to the Postal Service and questioned why they would not use their own agency or own employees to deliver such a report. I had a personal call from Mr. Runyon to discuss the situation and he informed me that he had researched my office and found that I use Federal Express to ship certain packages or parcels, and he further stated that the reason I use Federal Express is because it is cheaper, and the reason that the Postal Service used private courier is because it is cheaper on them. Having said that, I enjoyed your testimony.

Mr. RAHALL. Gentleman from Minnesota, Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman, and I appreciate the testimony of our two witnesses. We have reviewed this matter many times outside the committee hearing room, but a couple of points I would like to explore. There is a small trucking company just started up three years ago in Minnesota. They are intrastate. They paid $15,000 to file with the State of Minnesota. They have paid additional $25,000 in associated fees to operate in Minnesota, a total of $40,000 in fees.

If this legislation passes in its present form, it will operate to their disadvantage, but they are for it. They are for it with an extension that we preempt all State regulation of the economics of trucking, entry and rates, and leave in place State regulation of safety, financial fitness, interlining, uniform operating rules. Do you support that position?

Mr. ROGERS. Yes.

Mr. SMITH. Yes, sir.

Mr. OBERSTAR. Will that extension of regulation create any additional disparities in the marketplace that you know of?

Mr. ROGERS. Not that I can perceive as of this moment, but it is a very complicated world and we never know what comes tomorrow.

Mr. OBERSTAR. I mean, my concern is that we do this right at this point.

Mr. ROGERS. I completely share your concern and I——

Mr. OBERSTAR. Fourteen years ago I sat down on the corner here of this committee room, along with my colleagues, Mr. Mineta and Mr. Rahall and we were junior Members of the committee at the time, but we voted on deregulation of trucking. We don't want to have to come back in another couple of years and do it all over again. We get one opportunity to do these things, rare opportuni-

ties, and maybe this is one fortuitously, almost by accident, given to us. Let's do it right.

Mr. ROGERS. This is the time.

Mr. OBERSTAR. What about limiting, freezing in place the length and weight of trucks, since we are giving——

Mr. ROGERS. That would be another day. I think we need about 200 years to decide that.

Mr. RAHALL. The Chair has to recess for a vote.

Mr. OBERSTAR. I think we need just one brief amendment. If we are going to do all these good things for the industry, I think we ought to do another good thing for the driving public.

Mr. ROGERS. Well, the thing that is most important in truck safety is eliminating or lessening the numbers of miles that trucks have to go, and if you can operate larger combination vehicles safely over longer distances in appropriate States with first class roads, you operate fewer miles, and that is where the safety benefit comes from.

Mr. OBERSTAR. Thank you, Mr. Chairman. I think we will continue to proceed on this very beneficial opportunity we have.

Mr. RAHALL. Thank you, Mr. Oberstar.

Any other questions from subcommittee members?

Mr. ROGERS. Mr. Chairman, just one small comment. We are—the ATA position speaks about endorsing uniform bills of lading, et cetera. I think the one problem with endorsing uniform bills of lading, something that some of us have gone to paperless situations where we don't use any bill of lading. We would hate to find out that in the process of deregulating, we have imposed upon ourselves a paper milieu that we got rid of currently.

Mr. SMITH. We join in that. I mean, most of our shipments today, there is no paper other than the label. It is all electronic.

Mr. RAHALL. Thank you, gentlemen.

Mr. SMITH. Thank you very much.

Mr. RAHALL. We appreciate your patience in being with us today. The subcommittee will stand in short recess for this roll call vote on the Floor.

[Recess.]

Mr. RAHALL. The subcommittee will resume its sitting. The subcommittee will now hear from a panel consisting of first a fellow West Virginian, Larry Mulkey, the President of Ryder Dedicated Logistics, Inc., Miami, Florida; Tom Clowe, Chairman, President, CEO, Central Freight Lines, Incorporated, Waco, Texas, on behalf of Roadway Services, Inc.; Mr. Warren E. Hoemann, Vice President, Government Relations, Yellow Corporation, Overland Park, Kansas; and Mr. James E. Merritt, Morrison and Foerster, Tax Counsel to the Consolidated Freightways, Incorporated, accompanied by Mr. Michael Yost, Director of Taxes, Consolidated Freightways, Inc.

Welcome. Larry, are you going to kick it off?

TESTIMONY OF LARRY S. MULKEY, PRESIDENT, RYDER DEDICATED LOGISTICS, INC., MIAMI, FL; C. TOM CLOWE, CHAIRMAN, PRESIDENT AND CEO, CENTRAL FREIGHT LINES, INC., WACO, TX, ON BEHALF OF ROADWAY SERVICES, INC.; WARREN E. HOEMANN, VICE-PRESIDENT, GOVERNMENT RELATIONS, YELLOW CORPORATION, OVERLAND PARK, KS; AND JAMES E. MERRITT, PARTNER, MORRISON AND FOERSTER, ON BEHALF OF CONSOLIDATED FREIGHTWAYS, INC., ACCOMPANIED BY MICHAEL YOST, DIRECTOR OF TAXES, CONSOLIDATED FREIGHTWAYS, INC.

Mr. MULKEY. Certainly. I want to thank you, Mr. Chairman, the Members of the subcommittee, applaud you for having the hearings and it is an honor to be able to present our views to this committee.

I have the privilege of serving as President on Ryder Dedicated Logistics, which is a subsidiary of Ryder System. I am here today because of the outdated and unnecessary State motor regulation. We feel that it is impeding the progress of American business in reducing their transportation cost and improving the efficiency of their operations.

On behalf of Ryder and thousands of our employees, and our customers worldwide, I would ask the subcommittee to eliminate these remaining regulatory barriers.

If I may briefly give you a little background on Ryder, most people are familiar with Ryder, the yellow trucks that you see, which is our do-it-yourself move segment of our business. It is the smallest portion of our highway transportation company. We are the world's largest commercial truck rental and leasing company. Our Automotive Carrier Division is the Nation's largest highway transporter of new automobiles and light trucks.

Our Ryder Public Transportation Service Division carries more than 420,000 students back and forth to school every day. We operate 500 school systems in 19 States. We also manage and operate over 100 mass transit systems throughout this country.

One of the companies that I do have responsibility for is Ryder Dedicated Logistics and it is the fastest growing component of Ryder—the Ryder corporate family. I will refer to Ryder Dedicated Logistics as RDL as we go forward.

RDL provides dedicated contract carriage, which is a closed loop system, transportation system, and integrated logistics to our customers in roughly over 30 industries. This service goes well beyond the traditional motor carrier functions. Through our acquisition of LogiCorp, a logistics management company, RDL in essence becomes the freight traffic department for the benefit of our customers. We act as a shipper's agent to our customers.

We put together the intermodal transportation network that our customers need. This includes air freight, air freight forwarding services, less-than-truckload, truckload transportation, rail and ocean shipments. I think this clearly demonstrates the changes that we have going on in the industry. The industry is moving exceedingly fast, as others have testified, and I would like to point out that with the movement and the changing of markets, we have a lot of overlapping services that are being provided by many of those who have already testified today.

Unfortunately, Ryder and other providers of transportation services are restricted by many State laws that prohibit, limit or delay our ability to serve our customers on an intrastate basis. Although Congress substantially deregulated the industry intrastate transportation about 15 years ago, and the debate goes on whether it is 40 or 41 States or whatever, but we think it is around 41 States and still have some pretty archaic laws regulating entry, rates, service for intrastate trucking.

I would like to submit a few examples of the State laws that prevent Ryder and others from providing intrastate service in a timely manner to its customers.

Many States limit the number of customers that we may serve at one time. These contract limits arbitrarily restrict our business growth and discourage a very important economic development. For example, RDL recently acquired—agreed to provide dedicated logistics and motor carrier services to a major retailer in the automotive tar business in Nevada.

The plan called for establishing a distribution center in Las Vegas. Although this new center would bring a number of new jobs and additional tax revenues to the State, the agreement would require RDL to provide intrastate motor contract carriage and that would have put RDL over the limit of three contracts in that State.

Many States require contract carriage to obtain separate authority for each customer they serve. This process is extremely costly. As an example, in 1993, RDL made 51 intrastate authority applications to serve 45 customers in 20 States. The total cost of these applications were $750,000, which $250,000 of that went for filing fees alone. It has been estimated by outside this industry the cost of this kind of compliance goes as high as $12 billion impact to the industry.

In some cases, operating authority is flat out denied. In Texas, RDL acquired a fleet of vehicles that had been specifically designed and built to meet specific needs of a shipper of prefabricated buildings and there were no other vehicles like this anywhere on the North American Continent. Because of a carrier already certificated by the Railroad Commission in Texas, they offered to serve our customer using ordinary, nonspecialized, inefficient equipment, and RDL's application for intrastate operating authority was denied even though the customer wanted the efficiencies of this specialized equipment.

Mr. Chairman, one of the key questions that you asked this morning is whether State regulation impedes interstate commerce and I would submit the following example.

If a shipment goes from Illinois to a warehouse in California and then subsequently shipped to a point in California, there is a question as to whether the second leg or part of this continuous interstate movement is a separate intrastate movement that is subject to State regulation.

Shippers, carriers, have been focused on—or been forced to litigate this issue repeatedly with the ICC in Federal Courts and the State Utility Commission have fought aggressively in these proceedings to preserve their regulatory jurisdiction. In other words, you can never be sure where you stand on these issues.

I would echo Mr. Smith's testimony. Part of his testimony earlier on, we are engaged in continuous movement of international North American freight that benefits our customer and these kinds of regulations impedes that progress. Because of the laws restricting our ability to do business in a number of States, Ryder has long supported the preemption legislation, including H.R. 1077, a bill that would lift intrastate restrictions on private carriers.

It is estimated deregulation of interstate trucking has saved shippers and consumers $20 billion a year since 1980. The Wharton School has estimated that intrastate deregulation could save another $11 billion per year. Section 211 of S. 1491 would correct the competitive advantage granted in the Ninth Circuit decision by providing many large and small carriers, including RDL, with regulatory status now enjoyed by Federal Express and others. We are pleased that the administration has issued a policy statement that is supporting Section 211. It is important to recognize that the provisions would not affect the ability of States to regulate trucking safety or insurance or to impose truck size, weight and limit restrictions.

Some have argued that smaller for-hire private carriers may be unable to take advantage of this preemption in Section 211 and therefore would still be subject to State regulation. Ryder supports broadening Section 211 to cover all those motor carriers, both private and for-hire that operate both interstate and intrastate. This approach would place all carriers on the same regulatory footing and allow the marketplace to determine how freight is moved and at what price.

In contrast, Ryder would strongly oppose any effort to limit the effect of 211 solely to carriers that provide direct air service or to package express carriers. RDL and its competitors are constantly tailoring services to meet customer's needs and we should not be limited by some entirely artificial regulatory classification of what our market services should look like.

This legislation, in our opinion, is long overdue. We encourage the subcommittee to act quickly as possible to include a provision on regulatory preemption for motor carrier industry as part of the FAA Authorization Act. I want to thank you for the opportunity of being able to present our view to this subcommittee, Mr. Chairman, thank you.

Mr. RAHALL. Mr. Clowe.

Mr. CLOWE. Mr. Chairman, I appreciate the opportunity to appear here today to share the views of Central Freight Lines. Its parent, Roadway Services, Inc. and Roadway Service's other motor carrier subsidiaries. Central Freight Lines has the most intrastate operating authority of any motor carrier in Texas, as you know, one of the Nation's most regulated States. And we have over 50 percent of the Texas less-than-truckload market.

In the last four years, Central has become a regional interstate motor carrier and by the end of this year, we will be operating 88 terminals and three hubs in 11 States. We plan to expand into three additional States next year.

Central also serves Canada and Mexico in partnership with other Roadway Services carriers.

In 1990, we were in Texas only, so that is some of the change that Tom Donohue spoke of earlier. Roadway Services Inc., Central's parent company, is a holding company consisting of a number of motor carrier subsidiaries, including Roadway Express Inc., one of the Nation's largest long-haul common carriers of general freight. Roadway Express serves all of the United States as well as Canada and Mexico through a network of over 600 terminals.

I am basically a truck operator. I started as a truck driver in this industry and I am here today with 37 years of trucking experience, all of which has been in the regulated segment of our industry. I have owned my own company and have managed operations for publicly held corporations. I am a leopard who has changed his spots twice.

In 1987, I became the Director of the Transportation Division of the Railroad Commission of Texas where I implemented the far-reaching changes to Texas' system of motor transportation regulation that resulted from the 1987 Texas Motor Carrier Act. And from 1988 through 1989, I served as the Railroad Commission's first Executive Director where I had oversight responsibility for all of its regulatory divisions, as well as for its administrative services.

I therefore have an insider's appreciation of the benefits and detriments of regulation.

Mr. Chairman, while I strongly believe in the right and interest of States to govern the conduct of motor carrier operations within their borders, I nonetheless support the enactment of Section 211 of the airport bill which would clearly preempt States from regulating a large portion of the motor carrier business. I do so at considerable risk to Central's extensive Texas intrastate operating authority and its substantial less-than-truckload market. However, like many other motor carriers throughout this country, one of our sister companies, Roadway Package System, competes directly and vigorously with UPS, which, in turn, is understandably seeking equity with Federal Express, its major competitor through enactment of Section 211. Therefore, if the marketplace is to be truly competitive, we must all be playing by the same rules. Section 211 must be enacted.

We also believe, Mr. Chairman, that Section 211's passage should be part of a two-step process. The second vital step should be the enactment of regulatory reform at the Federal level, creating a streamlined market-based system that can also serve as the regulatory model to be used by any State that wishes to continue regulating intrastate motor carrier operations.

Let me explain. The purpose of Section 211 is to provide an exemption from State regulation for a specifically designed set of motor carriers. However, Section 211 does not address much needed reform at the Federal level. Section 211 would also presumably still leave some motor carriers subject to State regulation. I say presumably because no one that I have spoken to can say with any certainty that every motor carrier will be able to qualify under 211. That has been the subject of a great amount of discussion here today.

These shortcomings must be addressed and the sooner, the better. We believe the opportunity is at hand. As you know, the House voted down the appropriation of the ICC while the Senate appears

headed towards reducing the ICC's funding substantially. Clearly, the ICC's functions must be streamlined to respond both to the substantial reduction in its funding as well as to the many changes which have occurred in the marketplace.

We therefore propose that the motor carrier regulatory functions be streamlined to provide the minimum necessary framework to facilitate an efficient market-based system for interstate motor transport. We further propose that this new streamlined Federal framework become the national standard by requiring that any State economic regulation of motor carriers which may continue would have to be compatible with this new Federal standard.

Toward that end, therefore, we offer the following as a framework for a restructured regulatory system for the Nation and for the States.

First, we propose that the requirement to file tariffs with the ICC be eliminated in favor of a disclosure requirement. Do not require common carriers to file tariffs with the ICC. However, common carriers should be required to make their rates publicly available. They should be required to maintain tariffs at the carrier's principal place of business or another designated location known to the public.

Common carriers should be required to disclose the relevant rate in writing or electronically to the shipper so that both parties to the transaction can rely on the same rate.

Require that the rate agreed upon by the carrier and the shipper be the rate that is actually charged and collected. To this extent, therefore, while we support the elimination of tariff filings and the expense and bureaucracy that goes with them, our proposal would not eliminate the so-called filed rate doctrine requiring carriers to collect the rate which the shipper is quoted.

Let me emphasize that our purpose here is twofold: To eliminate once and for all the regulatory obligations which gave rise to the undercharge problem while preserving the protection which the consumer deserves. Give carriers authority to set and quickly change rates based on market conditions. Maintain the ICC's oversight and responsibilities to review any rate that is challenged as unreasonable, discriminatory or otherwise unlawful.

Under a more liberalized rating structure, the need for the Commission's continued involvement is even greater to ensure consistency in both the analysis of rate issues and the determination of their lawfulness than was the case prior to the MCA's enactment.

Indeed, the recent experiences involving undercharges have dramatically shown that absent the conferral of primary jurisdiction in a single agency charged with the overall well-being of the motor carrier system, which includes shippers' interests, determinations of rate lawfulness would end up being made purely ad hoc by individual Federal and State courts, without full understanding of and in many cases concern for the impact which any single decision could ultimately have on competition or the continued financial stability of the motor carrier system.

Eliminate the present antitrust immunity for general rate increases, while continuing immunity for carriers to interline shipments and establish joint rates and for the collective establishment of commodity classifications, uniform mileage standards and stand-

ardized bills of lading. Such bills provide a common nomenclature and a uniform base upon which shippers and carriers can rely, without conferring the competitive advantage to those participating in their establishment.

Secondly, provide a free market in transportation. Eliminate the public convenience and necessity standard for market entry. Base entry solely on an applicant's fitness to comply with the DOT's motor carrier safety regulations and applicable ICC requirements by requiring all new carriers to demonstrate not only their awareness of the DOT and applicable ICC regulations, but also the existence and details of the applicant's program to comply as conditions of operating.

Third, make this new market-based, streamlined system the national standard. Recognize a legitimate State interest in motor carrier oversight by permitting those States that wish to regulate intrastate commerce to continue doing so, but require that their laws be compatible with the new Federal scheme, including the new open entry for those who are fit and the new rate freedoms.

Mr. Chairman, in light of the exemption of many, but not all State motor carrier operations, which would result from the passage of Section 211 of the Airport Improvement Act, we believe this recommendation to be a particularly important one, not only to recognize the State's interests, but also to preserve the level playing field for all competitors in intrastate markets.

The Staggers Act governing rail regulations, as well as the Hazardous Materials Transportation Act, contained compatibility provisions which might be utilized with some modification to allow for the implementation of this proposed national standard for an efficient market-based motor carrier system.

Fourth, we finally recommend that Congress preserve those beneficial elements of the ICC regulations which not only facilitate business, but are fundamental to the conduct of business between carriers and shippers and provide a reasonable code of conduct.

The following are examples. The rules governing cargo loss and damage, claims and liability; they are well-settled as to the extent of a common carrier's liability, the filing and processing of claims, the shipper's access to the courts, uniform bills of lading which contain the terms and conditions of the transportation agreement for common carriage, commodity classification and standardized mileage guides, the rules governing the extension of credit to shippers by common carriers, the rules governing driver leasing, the prohibitions against discriminatory and anti-competitive practices such as the giving or receiving of rebates and concessions.

The ICC should not be abolished and its responsibility should not be transferred. Our Nation's economic policy and the implementing decisions need to be decided with consistency and a reasonable degree of predictability based on the merits of substantive issue—which would be based on the merits of the substantive issue involved with regard not only to the carrier and shipper directly involved, but also with respect to the impact on carriers and shippers generally.

Our ability as carriers and that of our shippers to plan our future growth, particularly with respect to our long-term capital investments, is directly dependent on our ability to predict with con-

fidence and relative accuracy what the rules and outcome of the game will be.

While a free market may be the best way to foster competition between individual carriers, there nonetheless needs to be a minimum set of rules to govern the responsible conduct of our business. A free market should not mean a free-for-all where the large carriers and shippers can take advantage of the small. To those who would point to States in which so-called total deregulation has occurred, and who would say that my fears are unfounded, do not ignore the effect and influence which the ICC standards of conduct have had on the conduct of business by carriers in those States.

In conclusion, Mr. Chairman, we support Section 211's passage. We have also offered a series of recommendations here today which we feel will significantly streamline the ICC, help reduce our country's deficit, and at the same time help ensure that the motor carrier industry remains a strong and valuable contributor to our Nation's economy and future growth. In that regard, we stand ready and willing to provide congressional staff with the full details of our proposals.

Thank you very much, Mr. Chairman, for the opportunity to appear here today.

Mr. RAHALL. Mr. Hoemann.

Mr. HOEMANN. Mr. Chairman, members of the subcommittee. I am Warren Hoemann, Vice President for Government Relations, for Yellow Corporation of Overland Park, Kansas. Yellow Corporation is a parent company of four motor carriers: Yellow Freight System, Preston Trucking Company, Saia Motor Freight and Smalley Transportation, as well as some other subsidiaries. Each of these four motor carriers is involved in the handling of general commodities in less-than-truckload quantities, an LTL carrier in traditional terms.

Mr. HOEMANN. Each of them handles both intrastate and interstate. And in fact, as Jim Rogers of UPS mentioned, if you look at one of our trucks from any one of our companies, there will be a commingling of intrastate and interstate freight on those trucks. Between these four carriers we hold intrastate operating authorities in 21 regulated States.

Despite having this position, and despite having operating authorities on our books that are valued at $7.7 million, Yellow Corporation supports the passage of Section 211.

We support the passage for two reasons, and the first, as UPS and Fed Ex themselves indicated when they said they are no longer just package companies, we are no longer just LTL companies. The markets of air freight, small parcel and LTL are rapidly merging.

And I would offer for your consideration, attached to my statement, three ads from the companies themselves. We have Federal Express, says they will handle the copier as well as the paper that is being copied. We have UPS, marketing directly to LTL shippers. And we have Yellow Freight, offering a two-day service and a guaranteed, time-definite, expedited service with tracing and tracking and money back which I would recommend to the customers that complained earlier.

But the point is that these are merged markets. The markets are blurred, and we cannot draw a line between them on a regulation basis. Section 211 will eliminate that problem. UPS and Federal Express are under different regulatory regimes right now—Federal Express by court decision; UPS and Federal Express by legislation in California and Kentucky, by Attorney General opinion in Texas.

We compete in those markets. We would like to compete on an equal basis.

I might mention, Mr. Chairman, we believe that competition is good, and we do not begrudge UPS and Federal Express for pursuing their own interests. It is to the benefit of the shippers and to our Nation. It also would be to the benefit to have other carriers on the same deregulated basis.

There is a second real reason and a broader policy reason for supporting Section 211. That is the marketplace is so dynamic, it is changing in such a fluid manner, as I have illustrated, that shippers need the selection of carriers. They need to have many different carriers and many different options to choose from. But intrastate regulations preclude that. Let me give you an example.

Many of our shippers are consolidating their supplier systems. They are going to supplier systems within a three-to-five-hundred-mile radius. And they ask us, can you serve us? Can you supply the freight needs of all of our suppliers?

Some of those movements are interstate, and some are intrastate. And even where we have operating authority, as we do in 21 different States, we nonetheless have to go to those 21 States and get rate approval.

And by the time we get rate approval, if we get it, the door has been closed. The shipper out of business necessity has had to make other decisions—whether to go with a completely deregulated carrier like UPS, like Federal Express, like another mode, or whether to change its whole delivery system. The window has closed for us.

That is clearly not to our benefit, but we submit, it is also not to the benefit of the shipper or of the Nation as a whole. The ability to meet the flexible, dynamic market is important.

Like many others who have testified, Yellow would support broadening Section 211 to include more people. We do not seek a competitive advantage by Section 211.

We are currently included because, if you happen to look at our ad here, you will see one of tne packages on our expedited service blasting off with a rocket attached to it. That indicates some of it moves by air. We make significant use of air carriers in our expedited business and in the normal conduct of our business.

And, in fact, the much-discussed 15,000 figure originated with Yellow, originally at 50,000, to measure the number of transactions that we would make on an annual basis with air carriers, showing our significant dependence upon them and showing that we are involved in the same market. So we would favor broadening.

And, similarly, we would favor addressing the noneconomic standards that were mentioned by Mr. Clowe and by Mr. Donohue.

But, most importantly, we must pass Section 211, and we cannot jeopardize it while we wait for these other matters to be addressed. Therefore, Yellow has consistently said it is a two-step process.

Let's pass Section 211. Then let's go for broader Federal preemption and the broader noneconomic regulatory issues. To the extent they can both be addressed now, we are quite welcome to accept them. But let's not jeopardize Section 211, which puts us all back on the same regulatory basis.

I thank you for your attention, and when we are done I will be glad to submit to questions.

Mr. RAHALL. Mr. Merritt, why don't we recess very quickly so we can go over and vote? The subcommittee will be in short recess.

[Recess.]

The CHAIR [presiding]. The subcommittee will please come to order.

At this time, I would like to call on Mr. James E. Merritt of Morrison & Foerster, Tax Counsel to Consolidated Freightways, accompanied by Mr. Michael Yost, Director of Taxes, Consolidated Freightways.

Mr. Merritt, your statement will be made a part of the record. So if you would go ahead and proceed in your own fashion, sir.

Mr. MERRITT. Thank you, Mr. Chairman, Members of the Subcommittee. Mr. Yost and I are happy to be here to talk about Section 211. We have a couple specific points we want to make, but first let me say something about Consolidated.

Consolidated and its affiliated companies is one of the largest cargo transportation companies in the United States. Consolidated's motor carriers employ over 28,000 persons and Emery Worldwide, an affiliated company, which is an integrated air cargo carrier, employs over 7,500 persons. The motor carriers and Emery operate throughout the United States and internationally.

As defined in Section 211, Consolidated's carrier-affiliated companies are intermodal all-cargo carriers. Accordingly, they will be directly affected by Section 211.

We are here for two reasons specifically: first, to express Consolidated's support for the position of the American trucking associations, as set forth in Mr. Donohue's testimony with regard to Section 211, and preemption of rates and entry by State regulators.

We want to address more specifically our second point which is a subsidiary issue, and I will try to be very brief with it: that is, with regard to the value of the State operating rights, what may happen to the values of those State operating rights; and the desirability of this Committee, including a statement with regard to concern regarding the value of those rights and for a fair and uniform Federal tax deduction for the value of those rights.

Intrastate rights, like the interstate operating rights which were deregulated in the Motor Carrier Act of 1980, have a substantial value. Carriers have acquired them by incurring significant costs to establish public convenience and necessity in proceedings before State regulatory authorities. Carriers also acquired them by directly purchasing them from another carrier. Other carriers, or the same carriers, have acquired intrastate operating rights indirectly by acquiring the stock of other carriers. To ensure uniformity and equal treatment among the different manners in which carriers have acquired intrastate rights, some remedy by statute is prob-

ably going to be required. Otherwise, you will have unequal tax treatment of the carriers.

Carriers report the values or cost of these intrastate operating rights in their financial statements. We heard that yellow is carrying about $7.7 million in costs of intrastate operating rights. As we heard in 1981 and earlier than that, in the 1980 act, lenders use or look at the financial statements and the value of the intrastate operating rights in determining the creditworthiness of carriers and, indeed, look to the resale value of those rights.

We have not completed a study of the total industry cost basis or value of intrastate operating rights at this time. Our best estimates are that they are somewhere between 100 and 200 million, probably closer to the latter number than the former, but less than 200. The value of Consolidated Freightways' intrastate rights is $11 million.

Now, deregulation by preemption of State regulation, Section 211, is going to greatly benefit the public. It will also adversely affect the value of the intrastate operating rights held by the carriers. This loss of value is going to be similar to the loss of value that occurred with regard to interstate operating rights in the enactment of the Motor Carrier Act of 1980.

As a result of that act, the Financial Accounting Standards Board adopted a position that required the motor carriers to write off their entire cost basis in interstate rights as an extraordinary item at that time. That action was taken because the Financial Accounting Standards Board found that resale and collateral values of the interstate operating rights had been substantially impaired resulting in an economic loss to the carriers.

The FASB statement also goes on to say the same result should apply where there is similar deregulation of intrastate operating rights.

We know this Subcommittee is not a tax-writing committee, but we do think it is important, and it would be very helpful if the Subcommittee could include a statement with regard to the appropriateness of a fair uniform tax deduction for the cost basis in intrastate operating rights. We believe a statement of that sort would be possible to include in the statement of managers accompanying the Conference Report on this legislation.

There is precedent for doing this. In the Motor Carrier Act of 1980, the full Committee included a statement to this effect in its report. I am quoting:

> Concern has been expressed that this legislation might result in a severe reduction in the value of the motor carrier operating rights which in many cases are now carried as assets on the carriers' books. The committee also intends to monitor the effect of the act on the value of operating rights. The committee would hope that the Committee on Ways and Means would also hold oversight hearings on this matter since that committee would be the appropriate forum to consider any tax relief legislation that might be appropriate.

We submit that a similar statement by this Committee would be appropriate with regard to Section 211. Indeed, I would like to point out that, following the recommendation this Committee made in its report of 1980, Congress did enact in 1981 tax legislation that permitted the carriers to deduct their basis in interstate operating rights over a 60-month period. The record considered by Congress in 1980 and 1981 establishing the need to do this with regard

to interstate operating rights is equally applicable to the intrastate operating rights.

To ensure equity amongst all the carriers, provisions similar to those enacted in 1981 should be considered. Let me point out that at this time I think it is possible that carriers will take the position that under current law they are entitled to a deduction. What was done in 1981 was to spread that deduction over a sixty-month period.

It is also possible that the Internal Revenue Service would challenge any deduction of intrastate operating rights. Under existing law, the ability of a carrier to sustain a deduction would depend on the facts and circumstances in each case.

The result also might vary depending in which State and jurisdiction a particular case arose. That could result in unequal and unfair results or discrimination amongst the various carriers in terms of the result and provide a very serious administrative and litigation burden.

We urge the Committee to include a statement of its concern and express the need for a fair and uniform rule to eliminate those kinds of controversies.

Mr. Chairman, thank you very much for allowing to us appear today and express our views.

Mr. RAHALL [presiding]. Thank you very much, gentlemen, for your patience in being with us at this late hour.

Let me ask you one question, Mr. Merritt. I was listening to your entire testimony, even though I wasn't physically in the room. Let me make sure I understand what you are saying. You are basically saying that you have valuable operating rights; is that correct?

Mr. MERRITT. That is correct.

Mr. RAHALL. And the preemptive legislation you are supporting would cause the loss of that value, is that right?

Mr. MERRITT. Yes, sir.

Mr. RAHALL. And then you want the taxpayers to basically foot the tab?

Mr. MERRITT. That is correct. Yes, sir.

Mr. RAHALL. I can understand the folks on the panel making a case for tax deduction if you were innocent, and Congress did something to you, and there is certainly precedent for that. But you are not doing that.

Mr. MERRITT. I don't think it is inconsistent, Mr. Chairman. Obviously, we are here because we support it, with conditions. One of the conditions of the American Trucking Association's approval is that there be some relief for the tax deduction, of the costs of the operating rights—as I understand the executive committee's position. That is the position we endorse.

The idea is that carriers which have acquired rights in the past have incurred substantial costs for acquiring those rights. If other carriers can now enter the field, the value of those rights are severely reduced. For example, Central said they had the most intrastate Texas authority. We could now enter Texas without spending more money to obtain intrastate authorities and compete with Central. As a result the value of Central's intrastate authorities would have been diminished. There was a strong showing to that effect with regard to interstate deregulation in 1980.

Now, if it is a benefit for the carriers, and we all are gambling—it is a benefit. In my own opinion, as a tax lawyer, I guess I can say that, is that preemption will be a benefit for the public, rates will come down. If it is a benefit for the carriers, it will depend on how successful particular carriers are. They will pay taxes on that income, but that will be as a result of their operations in a new era where they are getting no value for their operating rights, which have become, in effect, worthless.

Under existing law, smart carriers could start developing facts now to help them get a tax deduction. Other carriers may not be paying enough attention to the situation. They are running a greater risk that they won't get a tax deduction. I think we are talking about fair treatment for all the carriers involved.

Mr. RAHALL. You are supporting the legislation yet you are making the case for a tax deduction, and you are asking for that tax deduction immediately upon passage of the legislation, before it plays out and we see how the whole market reacts?

Mr. MERRITT. The way we foresee it playing out is we are taking the risk we will get a tax legislation in the future, that we will be able to get a uniform tax rule, as opposed to this particular piece of legislation. We believed that since it had been appropriate to the 1980 act to express the concern of the Committee with regard to the impact of deregulation on values and making sure that a fair, uniform result was achieved for the carriers, that we would come and ask you to do the same thing this time. We are not asking you to hold up this legislation for that purpose.

Mr. RAHALL. So if we enact this legislation, you would then go to Ways and Means and seek your tax legislation—

Mr. MERRITT. I think we would have to.

Mr. RAHALL. I have no further questions.

The distinguished Chairman of the full committee.

The CHAIR. Thank you very much, Chairman Rahall.

First, let me ask—I am not really sure who this might go to. Maybe Mr. Clowe and Mr. Hoemann might be able to deal with this, given their testimony.

You are sort of talking about a two-step legislative process. I guess my problem is, what happens to many intrastate customers? Won't they find themselves as being outsiders if Section 211 is passed and they are waiting for the next legislative vehicle to come through where we can then, quote, clean up, unquote, the rest of the things that we would like to do?

I am wondering whether or not—it seems to me we have enough time now to go ahead and try to get everything done in one fell swoop rather than to try and do it on a two-step dance through this.

Mr. CLOWE. Yes, sir. If I may attempt to answer that, we would like for it all to be done at one time. The proposal of a two-step process is only if Section 211 is moving ahead so rapidly that these other items covered in the second step could not be done at this time.

The CHAIR. I see. I see.

Mr. CLOWE. It would be preferable, in our opinion, that it all happen at one time.

Mr. HOEMANN. Mr. Chairman, Yellow has absolutely no objection to either broadening the preemptive portion or including the other uniformity elements at this time, as long as we do not jeopardize the progress of Section 211. Right now, we have an existing imbalance in our marketplace, and we need to rectify that.

As long as Section 211 is not held up and its progress continues, we have no objection.

The CHAIR. In the context of today's testimony, do all of you favor eliminating all of the States' ability to regulate intrastate commerce as opposed to allowing only certain carriers to be deregulated?

Mr. CLOWE. On the part of Roadway Services and Central Freight Lines, we propose that the entire deregulation of rates and entry be the action taken. And we would hope that the other issues which remain would stay in the States' authority.

The CHAIR. That would be the insurance requirements, the safety—

Mr. CLOWE. Claims, insurance. And there is no question about safety. That certainly is I think well covered in the discussion that has been held here today.

The CHAIR. What about—I think it was Mr. Donohue who mentioned something about the filed rate doctrine. He wants to keep some of the benefits that are there in the filed rate doctrine but the whole issue of the necessity of filing rates ought to be eliminated on that.

Mr. CLOWE. Yes, sir. It is our proposal that tariffs not be filed with the ICC or with the Railroad Commission, in the case of the State of Texas, but that the carrier publish those rates at its place of business or another designated location, either on hard copy or electronically.

And, therefore, there would be a known rate, agreed upon between carrier and shipper, which would fall within the filed rate doctrine and protect both the carrier and the shipper by having that agreement that would be the rate collected by the carrier from the shipper.

The CHAIR. Mr. Merritt, one of the things, when you talk about this tax issue, when—the new budget regimen we are under, everything is pay as you go. To the extent that there is a tax provision that loses revenues for us, we have to make that up somehow, either in additional taxes somewhere or by cutting the budget by that amount.

You said that you thought the total is about $200 million, the total operating rights existing out there?

Mr. MERRITT. We think that is the maximum cost basis in the intrastate operating rights that would be affected.

The CHAIR. First of all, how do you think the States would react to that, what you are requesting? How would the States react?

Mr. MERRITT. With regard to a tax deduction, some of the States typically would not follow a Federal tax deduction for the operating rights.

The. CHAIR. The thing is if we allow that tax deduction, you know, do the States then say, okay, the Federal Government has allowed Section 211 to be passed and so we will have a section in our tax code for trucking companies to be able to write that off?

Mr. MERRITT. I doubt if you will have uniform results with the States. Some States will pick up the Federal deduction automatically. Other States—and I think California, for example, back in 1981 did not allow a deduction for the ICC operating rights, even though the Internal Revenue Service and Congress did.

So I think it will vary from State to State.

The CHAIR. Then the other question I have is, to the extent that we lose, let's say, on the basis of a $200 million value tax revenues, any ideas how we might be able to come up with that?

Mr. MERRITT. Well, I am hopeful I will have some time to think of some.

The CHAIR. If you would do that, respond for the record.

Mr. MERRITT. Because I know if we don't we won't get it. It is that simple.

The CHAIR. That is right. For us, it is writing a report, as you say, keeping it in the report language, since we aren't the tax-writing committee. But to the extent we consider that Ways and Means ought to do this, they will say, all right, guys, how do we make up for it?

Mr. MERRITT. I will do my best to come up with a good submission for the record for you.

The CHAIR. Very good.

Thank you very much.

Mr. Chairman, thank you.

Mr. RAHALL. The gentleman from Texas, Mr. Geren.

Mr. GEREN. Thank you, Mr. Chairman. I really don't have a question.

I was talking to my colleague, Mr. Clement. He has been working on his dereg bill for the last four or five years. I have been working on my private carrier bill for the last four or five years. The past two weeks has rendered us irrelevant. But I am pleased the panel has expressed its unanimity to support Section 211 which includes what Mr. Clement and I have been trying to accomplish.

But I am pleased to see this kind of broad-based support within the industry and also coming from the previous panel who would appear to benefit from 211, unmodified and unexpanded, yet they support expanding it to go further with total deregulation. I appreciate this panel's input on this issue. I am hopeful at the end of this process that what you all advocate is what we are able to accomplish. Thank you.

Thanks, Mr. Chairman.

Mr. RAHALL. The gentleman from Tennessee, Mr. Clement?

Gentlemen, thank you very much.

Mr. RAHALL. The subcommittee will now hear from a panel consisting of Mr. Martin E. Foley, Executive Director, National Motor Freight Traffic Association, Alexandria, Virginia; Mr. James Harkins, Executive Director, Regular Common Carrier Conference, Falls Church Virginia; Mr. Jack Seims, Owner and President, Pro Express, Seattle, Washington, on behalf of Washington Trucking Associations;

Mr. Daryl E. Clark, Vice President of Traffic, Rudolf Express Company, Bourbonnais, Illinois; and, Ken Booze, President, Eastern Oregon Fast Freight, on behalf of Oregon Trucking Associa-

tions, Inc.; and Mr. Jim Hopper, Executive Director, Associated Motor Carriers of Oklahoma, Inc., Oklahoma City, Oklahoma.

TESTIMONY OF MARTIN E. FOLEY, EXECUTIVE DIRECTOR, NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION; ALEXANDRIA, VA; JAMES HARKINS, EXECUTIVE DIRECTOR, REGULAR COMMON CARRIER CONFERENCE, FALLS CHURCH, VA; JACK SEIMS, OWNER AND PRESIDENT, PRO EXPRESS, SEATTLE, WA, ON BEHALF OF WASHINGTON TRUCKING ASSOCIATIONS; DARYL E. CLARK, VICE PRESIDENT OF TRAFFIC, RUDOLF EXPRESS COMPANY, BOURBONNAIS, IL; KEN BOOZE, PRESIDENT, EASTERN OREGON FAST FREIGHT, WILSONVILLE, OR, BOARD OF DIRECTORS, OF OREGON TRUCKING ASSOCIATIONS; AND JIM HOPPER, EXECUTIVE DIRECTOR, ASSOCIATED MOTOR CARRIERS OF OKLAHOMA, INC., OKLAHOMA CITY, OK

Mr. RAHALL. Mr. Clark, you may proceed.

Mr. CLARK. Thank you, Mr. Chairman. Good evening.

That other side will do anything. They even told you I left to catch an airplane. Of course, I told them all which side I am on.

I will condense. You have my report. I am sure it will be read. And I am sure you gentlemen read your mail. My faith has been reconfirmed because I already sent you the letters for the conference committee, my being against 211. And I thought it would slide right through without this hearing, which I thank you for, sir.

I heard many old, old things today I have heard for years. The deregulation wars, like from Fred Smith, Jim Rogers, about that poor shipment in Virginia that they have to take out of the State and bring it back. There is probably seven or eight intrastate carriers out there just dying to get that shipment if they pick up the telephone.

There are a few pertinent things I would like to bring before the committee. My name is Daryl Clark. I reside at 861 Gettysburg Court, Bourbonnais, Illinois, and I represent Rudolf Express Company. We are an interstate and intrastate motor carrier. We have intrastate authority in Illinois and Indiana. I have been with the company 44 years, and I want to see this thing to the end, this deregulation, one way or the other. I am not going to retire.

I have been Vice President of Traffic for some 25 years with Rudolph Express Company. We are a union carrier. Twenty-five percent of our total revenue of $24.6 million—which I think is a small carrier. Nobody defines a small carrier around here. We are a very small carrier compared to the giants you have had in this room today.

Our annual payroll is approximately $9 million. We pay salaries to our employees which are good salaries, union wages. They pay off the mortgages. They put the kids through school. And we even made a slight profit in 1993. We had a 99.4 operating ratio.

We contribute regularly to the union pension plan, some $743,000. I could not get the figure exactly from the CMA pension plan, what our pension liability is, but intrastate carriers will go down the drain if you pass Section 211 tagged on to the back end of a 747. And I still say you are not going to get a tractor with two loaded pups off the ground with an airplane bill.

Separate them. If you wish to talk intrastate, we will be glad to sit down and talk intrastate. We also pay 100 percent of hospitalization for our employees, and we contribute to a 401(k) plan for our nonunion people that work in the office, most of them.

All I want to bring out is a few things I haven't heard today. I will read one paragraph. Final comment.

Earlier in my statement I indicated that deregulation of the large carriers enabled them to reject freight they feel is not in their best interests to the harm of shippers. I can document one case where UPS refused freight, and it took an order of the Interstate Commerce Commission to make UPS accept statement. Maybe this is the reason UPS is working so hard for this, which would permit UPS to refuse unwanted freight which under the order of the ICC they must now accept. I hope somebody asks me about that order.

All I have to do is mention fireworks. We haul fireworks every day. We are required to, both inter- and intrastate. And when you get the large carriers in, they are going to select their freight. We are going to get bigger. We are not poor little people. We are happy. Our company has been in business since 1945. And, before that, they operated with a bread truck from 1935 on.

I am in the third generation of my owners. I am very happy with my company and my life. And we have many happy employees. It is what put their kids through school, paid their homes off and they are living on a nice union retirement, which we just negotiated our four-year term contract with the union, and they are going to retire at $2,500 a month. Now, I don't have that or I would be retired.

I thank the committee for allowing me to appear. May I be excused, Mr. Chairman? I have a flight at 7:30.

Mr. RAHALL. Yes, you can be excused so you can go back home and open the door tomorrow.

Mr. CLARK. I will have to open a grocery store instead of a truck line. Don't let me down.

Mr. RAHALL. Gene, do you want to proceed?

Mr. FOLEY. Thank you, Mr. Chairman. I almost said good morning, Mr. Chairman and Members of the committee. I scratched that out and wrote good afternoon. And now it is good evening.

Thank you for the opportunity to speak at the hearing. Our joint statement with the Regular Common Carrier Conference has been filed with the committee.

I would like to use the little bit of time I have just addressing some of the troublesome elements of Section 211 from the standpoint of the interests of the thousands of motor common carriers of LTL Freight whose State-regulated intrastate operations, like those in Mr. Clark's company, from whom you have just heard, will be seriously jeopardized if Section 211 is enacted.

NMFTA does not support the enactment of Section 211 by the House. Section 211 is a prime example of special interest legislation.

The proposition that the world's largest transportation company is somehow at a competitive disadvantage in the intrastate transportation of small packages moving in expedited delivery service is a myth. That huge carrier holds intrastate operating authority in every State which regulates entry into the trucking field. Clearly,

this carrier can and does operate in intrastate commerce competitively with the air carrier or carriers which also affect the expedited delivery of envelopes, small packages, parcels and so forth by means of their trucks.

Section 211 will grant a tremendous competitive advantage for some very large transportation companies by exempting their intrastate trucking operations, leaving them totally unregulated, while at the same time thousands of smaller motor common carriers remain subject to intrastate regulation in 42 States, and by your count and by our count, 42 is the number of States which do regulate trucking for hire in their States.

It is hard to visualize a more unfair and more undemocratic or undesirable result than that which would be created by enactment of Section 211.

In the view of our members, Mr. Chairman, Section 211 is an aberration. It was passed in the Senate for the benefit of a select few huge transportation companies without meaningful debate, without input or public testimony from the States or other interested persons, and without a trace of evidence showing that the operations of the States in the course of exercising their constitutional rights to regulate purely ground transportation conducted solely within their sovereign borders, was in any way a burden on or even adversely impacted on interstate commerce.

This threshold test for Federal preemption of States' rights is totally absent here. In the view of our members, Section 211 is simply bad law.

For example, under the Interstate Commerce Act motor common carriers may not unlawfully discriminate against persons, places or the kinds of traffic they haul. That is the mandate of the Congress. Section 211 will prevent a State from enacting or enforcing similar public interest consumer-oriented goals in intrastate motor transportation. That is patently unfair, unwise and unwarranted in the view of our members.

The Interstate Commerce Act prohibits a carrier from giving rebates and kickbacks. Section 211's preemptive provisions also deny a State the power to prevent such historically prohibited actions in intrastate trucking. Our members believe that is neither logical nor desirable.

Mr. Chairman, hardly anybody in America is more familiar with the provisions of the Negotiated Rates Act than you are. Signed into law on December 3, 1993, the NRA resolved serious and long-disruptive problems concerning negotiated but unfiled rates and off-bill discounting. It mandated the restoration of tariff integrity. Section 211 will disenfranchise a State and its right to enact or enforce similar provisions at the State level. And our members believer this is patently wrong.

Mr. Chairman, NMFTA is not opposed to regulatory reform. We simply urge the Congress to go about its review and revision of the existing regulatory provisions in a more sensible and more orderly fashion such as the Transportation Research Board study approach which is outlined in the statement which has been filed jointly with the Regular Common Carrier Conference.

In summary, Mr. Chairman, NMFTA urges the subcommittee, the full committee and, ultimately, the House to reject Section 211

and your anticipated approval of those few substantive provisions of Senate bill 1491 which deal with airport improvement funds and dispute resolutions concerning landing fees. NMFTA's members have no interest in those matters, of course. However, if the House is of the view that it is absolutely necessary to enact some provisions which will preempt the States in their economic regulation of the motor transportation of small packages, parcels and envelopes, then let that legislation be tightly drafted so as only to exempt the for-hire transportation of those kinds of parcels, packages, pieces and/or envelopes which are moving in expedited delivery service and which can be tucked under the motor carrier driver's arm when making delivery from the truck to the consignee.

Thank you, Mr. Chairman. I would be glad to take any questions at the appropriate time.

Mr. HARKINS. Thank you, Mr. Chairman.

First, I would like to say thanks to you and the committee members and the staff for your patience; and, secondly, I would like to applaud your endurance.

Like Gene, I had my statement, my script, all done very nicely this morning when I got here, and I have changed it about three or four times. I am beginning to feel like Richard Burton on his wedding night, the second time he married Liz Taylor. I know what to do. The problem is to figure out how to make it interesting!

Now, you know who we represent, and we support yours and the committee's concerns with the problem that we want to reduce spending. But we are sort of caught in the middle of this situation, where over on the Senate side the Senators passed 211, and they are relying on the Interstate Commerce Commission to pick up the slack for the elimination of the State regulations.

Here on the House side, you folks have already passed a bill that zero budgets the ICC, and we are discussing how much of the State regulation we can keep to sort of keep the stability.

So we are right in the middle of it. And we certainly hope you can figure out a way to eliminate this uncertainty for us, with good reason and strong deliberation.

During the debate on this matter, as it continues and, hopefully, as it ends, we would like the committee to consider a few principal features, and I think it has been said many times today, we hope all carriers will be treated in a fair and equal way.

Secondly, carriers will be able to do a much better job if we have a compatible regulatory program between the Federal and State governments.

Thirdly, I think Congress really needs an objective analysis of what we are about to do here and really which reforms are needed and which reforms are not needed.

Fourth, I think we also would appreciate, and we do need, an orderly transition time within which the States' carriers and the carrier customers can adjust to whatever new type of program may be enacted.

And, lastly, I would like to stress that, from my point of view, there is absolutely no reason to rush through this thing, and there is every reason instead to be very deliberate and take our time and do this so that we don't make a mistake by simply doing something in a hurry.

As I recall the basis for this whole proposal when we first got involved in it about a month or so ago was to take care of a competitive disadvantage that UPS was suffering under vis-a-vis Federal Express. And as has come out here very, very clearly, UPS is the most profitable transportation company in the world. Last year, they did over $18 billion, I think it was, in gross revenue, and they made over $800 million in profit. A very, very successful year for them.

Fed Ex didn't do badly either. In the last 12 months the report I just read showed that—over $8 billion in revenue for a year's time. They did about $200 million in profit. Now, that turns out to be that UPS has twice the market of Federal Express and four times the profit of Federal Express. And to tell you the truth, I don't know any single carrier that wouldn't want to suffer that kind of a disadvantage. I don't think they exist.

As has been brought out earlier by Gene and others, Section 211 really would not remove any disadvantage. It would create a humongous advantage for UPS and for some other carriers over the rest of the trucking industry as it is written now.

And it is fair to say the majority of our members, and I believe Gene's members as well, will support a reasoned approach by the Congress that would respect the rights of all the carriers and the customers and provide a more effective and coordinated Federal and State government program.

To that end in our testimony, which I know you read very, very carefully, we propose the matter of a study being done by an unbiased and knowledgeable group, the Transportation Research Board, and have that study reported to the Congress with specific recommendations as to what changes ought to be made to the State regulatory process and Federal to bring the two into compatibility and give us something that will be very effective in the future and procompetitive and all the other things which are objective goals.

We are convinced that type of an approach would give us a fair, uniform, coordinated program for Federal and State governments. What we don't need, though, and what we don't want is the Section 211 as it is proposed right now. That would create tremendous unfairness.

And, while it is not intended, it would also create other problems for the States in that the way the language is written and the way the courts have decided several cases already, it would place these carriers that come under the Section 211 exemption in a special zone where, for example, they would not be subject to the State tort laws, and they would not be subject to the State consumer protection laws.

These are cases that have already been decided, in one case the Supreme Court and another case the Federal District Court. So this is not supposition in this case. This is a test of real language with regard to airlines where the very same language has been used to exempt them from tons of State regulations which I am sure this Congress did not intend and which would not be good public policy.

Included in that—and I might just as a summation add—it would impact on safety matters. Now, I don't know of anybody that is in favor of making a change that would harm safety. We are all

for improved safety. And the trucking industry has been improving its safety record, not just since 1980 when deregulation came into effect, by the way, but it has been improving it for many, many years before 1981 when we were deregulated. Our objective is to be a very safe industry, and that is the case whether there is regulation or not regulation.

But the complication of the proposal of 211 is that it would remove a very, very powerful weapon from the hands of the State bodies to require carriers to toe the line with regard to safety. And that was brought up, I think, about a year and a half ago at this committee when a gentleman from California testified and made clear that the only way the California Highway Patrol was able to assure that carriers on their roads toed the line with regard to safety was to threaten them with the removal of their operating certificate. That would effectively put them out of business.

When this threat was put before a carrier he got very safe in a hurry.

Mr. HARKINS. And he made the mention of the fact that if they did not have that, the only thing they would have would be the opportunity to issue citations or tickets to those carriers, which they would either gleefully pay or simply ignore and continue on going about their business.

So while you know the economic regulation aspect of it is certainly not directly involved with safety, but indirectly, there are lots of aspects about the economic regulation authority of the States that puts into the hands of the States the effective tools that enable them to make sure that carriers live up to the safety regulations. If you deregulate us, 211 would propose you take from the States the authority to issue certificates and you take from them the powerful tool of being able to make the carriers toe the line. That is just an example.

I am not the expert on that, but I can tell you there are a lot of other subtleties in the way the language would be interpreted, the 211 language would be interpreted, that would remove the State's authority, their ability to apply many, many laws with regard to the actions of the carriers that would be operating under that 211 section in a deregulated atmosphere.

I would just like to add one other thing, that a lot of our members are not in favor of this particular proposal. Some are in favor of it and some are in favor of it with modifications, but many are not in favor of it.

Now, they would like to get that tax credit as well, and I can give you a list of the carriers that are not in favor of it if that has any benefit in being able to grant that group, at least, the tax relief.

Thank you, Mr. Chairman.

Mr. RAHALL. What is the bottom line price tag?

Mr. HARKINS. The bottom line price tag?

Mr. RAHALL. Yes, for that deduction.

Mr. HARKINS. The estimate would be about, I think, a 40 percent tax rate of—there are $200 million, so what does that come out to, about $80 million?

Mr. RAHALL. Something like that.

Mr. HARKINS. Something like that. If my mathematics are poor, forgive me.

Mr. RAHALL. Mr. Seims.

Mr. SEIMS. Thank you, Mr. Chairman, Members of the committee.

Mr. Chairman, thank you for pronouncing my name correctly. You are the first person I think that hasn't said Seems or Sims. I appreciate that. It is an old Norwegian trick that we have invented.

I am President of the Washington Trucking Association, a trade association representing 1,500 member firms in Washington State. I am also the owner and president of Pro Express, which is an intrastate local cartage carrier and we are one of the small ones with just 20 employees.

I am here today to testify in opposition to Section 211 of Senate Bill 1491.

While we recognize that the American Trucking Association on most issues speaks in behalf of the Nation's trucking industry, I think it is important for you to know that on the issue of Federal preemption of State regulation, they do not speak for the Washington Trucking Associations.

We were very disheartened when ATA at a recent executive committee meeting changed its long-standing policy in opposition to intrastate deregulation. Our membership felt abandoned on this very critical issue.

At an emergency board meeting, board of directors meeting on Tuesday, June 28th, 1994, there was open hostility and anger at the thought of a few large interstate carriers advocating deregulation of intrastate traffic for their own gain and to the detriment of many of our members.

To put things in perspective financially, United Parcel Service, a proponent of Section 211, as Mr. Harkin has just stated, is a $18 billion a year carrier, whereas the State of Washington's biannual budget is $16 billion. In addition, according to the Washington Utilities and Transportation Commission, all carriers in Washington intrastate commerce generate a total of $607 million annually.

The fact of the matter is, Section 211 does not level the playing field as has been claimed, but instead allows a few large interstate carriers to confiscate the playing field.

Section 211 and ATA's new position which would broaden Federal preemption even further will simply give large interstate carriers a tremendous advantage over their smaller intrastate competitors.

As was seen with interstate deregulation enacted in 1980, predatory pricing will assuredly take place as large carriers maneuver to increase their market share.

This means that many of the long-time family trucking firms, including less than truckload, dump truck, forest products and agricultural carriers will be in jeopardy, as will the well-paying jobs that these companies have supplied for years.

Highway safety will always be a loser. I know this has been dealt with at length today, but I am going to give our opinion.

As has been witnessed with interstate deregulation, when rates are decreased through predatory pricing, there are only two areas where operating costs can be cut. The first is maintenance. Carriers will be forced to run the tires a bit further, extend the period

for preventive maintenance and operate trucks past their useful service life because there is no money to replace them.

The second area that will be cut is compensation for the drivers. This has been done on an interstate level to the point where it has created a driver shortage resulting in extremely high driver turnover. In both instances, this will mean a deterioration of safety in heavy trucks.

Washington State has a transportation system that we are extremely proud of. Shippers and receivers of freight are assured of having their goods transported at a fair and equitable price, in a timely and efficient manner.

Small and large shippers are treated equally regardless of location or shipment size. I cannot overstate the importance of intrastate regulation to the members of the Washington trucking associations. The future of many of our members is in jeopardy should this legislation pass. I believe the old adage, "if it ain't broke, don't fix it," certainly applies here. I would respectfully request that prior to voting on this issue, a full and complete understanding of the social and financial impact on States be understood.

Thank you for the opportunity to appear here today and I will certainly answer any questions at the appropriate time.

Mr. RAHALL. Thank you, Mr. Seims.

Before we go to the last two panels, we have a roll call vote on the Floor, so the subcommittee will be in a brief recess and we will return.

[Recess.]

Mr. RAHALL. The subcommittee will resume its sitting.

And I believe—let's see, are we to Mr. Booze?

Mr. BOOZE. Yes.

Mr. RAHALL. You may proceed.

Mr. BOOZE. Mr. Chairman, honorable committee Members, my name is Ken Booze and I am the President of Eastern Oregon Fast Freight. I also serve on the board of directors for the Oregon Trucking Associations.

I am here today on behalf of my own company, but also my colleagues in Oregon who have asked me to represent our State's trucking industry, which is made up of 28,000 carriers who provide good family-wage jobs to nearly 89,000 Oregonians.

If I might, I just wonder if you would recognize the people from Oregon and Washington that have—came to support my first testimony to Congress. Would you stand up, please.

Mr. RAHALL. Welcome.

You have half the audience here.

We welcome all of you to the subcommittee.

Mr. BOOZE. I would like to say that I am in opposition to the bill, and my tax bill is $250,000, so if this bill passes, I would like that credit to go on record. That is what I have got invested in my intrastate authority.

Mr. RAHALL. To follow up Chairman Mineta's question, where will it come from?

Mr. BOOZE. I think I would try to answer that before you pass it, possibly.

Mr. RAHALL. Did I hear you say UPS?

Mr. BOOZE. That would be a good idea. That would be a good idea.

My company employs 97 people and generates revenues of about $5 million a year. We service the many widespread rural communities in central and eastern Oregon. These communities have a tremendous stake in what goes on here today.

The threat to preempt States' rights to regulate intrastate trucking is of grave concern to my company. My colleagues and my customers for a number of reasons, not the least of which is, we believe States must be able to continue to regulate or not regulate the trucking industry as best suits the citizens' particular needs.

The current deregulation proposal contained with Section 211 of Senate bill 1491 will prove disastrous for small businesses and consumers. Let me explain some of the key reasons.

Small towns and smaller shippers become the victims of price discrimination. The result of interstate deregulation off the beaten path locations and smaller shippers who have little clout with carriers now pay premium prices, while larger companies receive heavy discounts for the same service.

With intrastate deregulation, State regulatory agencies will no longer be able to ensure that all trucking customers receive fair treatment. Small businesses which employ almost 90 percent of our State and our Nation's work force will be competitively disadvantaged as a result of being forced to subsidize large corporations' shipping discounts. And I would like to add a note that I made to myself this morning.

The 1980 Deregulation Act was softened by the State regulation over the last 14 years. Without the State regulation, I think we would have taken a much larger hit nationally on the deregulation issue.

It is a situation where the big guys are against the little guys, and I am a little guy, and I have visited my first time on the East Coast, but I flew here because this has finally hit a chord that didn't strike right with me.

Currently, viable small trucking companies, just like mine, will be plunged into bankruptcy, throwing tens of thousands of Americans out of work.

Under deregulation, shoestring trucking operations will run rampant. States won't be able to ensure the companies are financially stable and safe.

There is no provision in the bill on who issues a permit. Is it the ICC, which we don't know is going to exist? Is it the State?

If no one issues a permit, how do you track the carrier on safety issues? That is a small matter, but I think it is something that the committee needs to look at.

Deregulation of intrastate trucking will destabilize the marketplace. Both the shoestring operations intent on undercutting the competition and existing companies that are plunged in financial distress due to that undercutting will have fewer dollars to spend on safety and maintenance.

Companies in dire financial straits are more inclined to speed and violate hours of service rules in order to stay afloat financially. As a result, the motoring public will face increased danger on the road. In fact, a 1991 GAO study revealed that trucking companies

in the weakest financial condition have the highest accident rates of all trucking operations.

Rural areas will no longer receive adequate shipping and delivery of critical goods and services. Two-thirds of Oregon's communities rely solely on trucking companies like mine for delivery of their essential goods. With intrastate deregulation, our small towns that are located outside of the more profitable freight corridors will lose crucial cost-effective delivery of these goods.

The service that would remain to those areas would cost far more, creating a financial hardship for residents, particularly for those already hard hit, economically depressed communities. Current intrastate regulations ensure that Oregon's rural regions receive reliable service at a fair price.

To give you some perspective for those of you who haven't been to Oregon about the territory my company covers, we provide overnight service to rural communities over 400 miles away from our terminal. That is equal to providing service from Washington, DC to Columbus, Ohio, to Raleigh, North Carolina, to Albany, New York, or Hartford, Connecticut.

The point is, there are scores of communities in Oregon that rely on the range of service Eastern Oregon Fast Freight provides, and these are small communities, 3,000 or less population, and they are far between, 60, 70 miles, from central Oregon, Bend, central Oregon to Burns.

In 1982 the bus service was discontinued. Greyhound had the Burns route. With the deregulation, Trailways went in. The two of them had it. Neither one of them could make it and they both pulled out. Right now, I am the only regulated carrier or unregulated carrier that services Burns, Oregon, population of 2,900 people, 300 miles from Portland.

If this bill is enacted, do you think I am going to hold myself out to run 300 miles for 2,900 people for half a dozen to a dozen shipments a day? I will go where the money is. I will go where the big markets are, to Eugene, Oregon, 100 miles away, with a population of 200,000 people.

States will lose the ability to protect their citizens who rely on the trucking industry for safe, dependable shipping services at a reasonable cost. Each State has different needs regarding transportation services and it is only appropriate for State legislators and other officials to have the right to tailor their interstate regulations—intrastate regulations based on what they deem to be in their citizens' best interests.

In Oregon, in recent years, State legislators have debated the issue of economic regulation three times and all three times they have reaffirmed their commitment to maintaining regulation of intrastate trucking. Oregon's State officials have determined that regulation is in the best interest of all Oregonians.

In closing, the Oregon Trucking Association's Board of Directors and its members urge you to prevent Federal preemption of intrastate trucking regulations. Otherwise, the toll on our industry, our economy, our small towns and small businesses and our highways will be devastating. The price for all of us is simply too high to pay.

Thank you.

Mr. RAHALL. Mr. Hopper.

Mr. HOPPER. Thank you, Mr. Chairman.

I want to commend you on your perseverance today in these ma athon hearings. I wanted to start by saying, one of the most popu lar politicians I know is someone who traditionally gives very brief remarks, and so I hope that my very brief remarks will be looked on favorably by this committee, and I know they will be by the people who will follow me after I say a few words here.

I do appreciate the opportunity to appear before you. My name is Jim Hopper and I serve as the Executive Director for the Associated Motor Carriers of Oklahoma, which is the trade association for the trucking and allied industries in Oklahoma.

Our association has—I represent in our association approximately 400 carrier and allied members, and it is on behalf of the vast majority of those members that I appear before you today to give testimony concerning the Federal preemption of intrastate trucking.

One thing I wanted to say, we have heard many, many times today about the idea of creating a level playing field for all the trucking industry. My thought about that would be that most of the carriers in Oklahoma, and I think the vast majority of the smaller carriers thought the playing field was already level before Section 211 was proposed.

I think that they feel that it probably is not going to be very level if this proposal goes through unchanged, if the Senate proposal goes through unchanged.

The American Trucking Association is very fond of saying that "if you have it, a truck brought it," and that is very true for every State in this Nation. In my State of Oklahoma alone, in 1992 a total of over 87,000 people worked in the trucking industry, which worked out to about 1 in every 11 people who worked in the trucking industry in Oklahoma.

They generated about $2.7 billion in payroll in 1992, and those statistics can be cited for every single State in the Nation. And I say that just to show that the number of people who work in the trucking industry is enormous throughout this country and I think that we really need to take the opportunity to consider the impact that this proposal will have on these families and the people that are dependent upon the trucking industry for their livelihood. The vast majority of the trucking companies in the United States are what would be considered small companies, and I think that those are the companies that most stand to be harmed by this proposal if it is not changed.

One thing that is unique, not just to Oklahoma but to other States in our region of the country, is the regulation that the State of Oklahoma has concerning not only all aspects of the trucking industry, but particularly our oil field fluid haulers. These trucking companies haul a great deal of hazardous materials that are generated by the operation of oil and gas properties in Oklahoma. Our regulatory commission regulates these trucking companies to a very great extent and they also regulate the disposal wells where these hazardous materials are disposed.

If Federal preemption of the trucking industry goes through and these oil field fluid haulers are no longer subject to regulation, there is a good possibility that anybody can go out and buy a truck

and hold themselves out as one of these haulers with no regulation whatsoever on where they dispose of these materials. So there is a grave concern about the environmental impact in States like Oklahoma and other States that have these kind of activities in their State.

At the very least, the majority of our membership would like to see this legislation strictly limited to the problem that it was originally proposed to address, and that was the problem for the large intermodal all-cargo air carriers. But if that is not the case, we think that there are some specific segments of the trucking industry that should be given some consideration, like the household movers, the oil field fluid haulers and the dump truck operators and those kind of operations.

We are very concerned in our association that if Section 211 goes through unchanged or is even expanded, that predatory pricing will occur and the service in rural areas and small shippers will suffer. We don't believe that the Federal Government should preempt States' rights for strictly intrastate trucking just because some of the super carriers got together and decided that they wanted a, quote, "level playing field."

We ask that the committee please consider the hundreds of thousands of people who work in the trucking industry, the vast majority of whom work for small firms, and we would ask that you please not fail to consider their livelihoods and what might happen to them if this bill goes through unchanged.

We don't think that those carriers and those people that have not only had the responsibility but the requirement to provide service to every nook and cranny of this country, should be abandoned by something that may happen to them that was really through no fault of their own. We would urge you, especially the smaller carriers in Oklahoma, to consider that.

Again, I want to thank you for giving us the opportunity to provide this testimony today and for giving me an opportunity to provide the other side of this story.

You do have my written statement and I would request, as others have, that it be made a part of the record.

Thank you, sir.

Mr. RAHALL. Thank you, gentlemen, for your testimony.

Before I ask a question, I do want to submit without objection the statements from the following to be made a part of the record at this point:

Parker Motor Freight of Grand Rapids, Michigan, William Lavelle, on behalf of 19 Pennsylvania Motor Carriers; Michael Meredith of the Oregon Trucking Associations; TP Freight Lines of Tillamook, Oregon; TNT Reddaway of Clackamas, Oregon; Michael Khourie on behalf of Cal Pak, Union City, California; Transportation Lawyers Association, and the Ohio Transportation Lawyers Association.

[Please see additions to the Record.]

Mr. RAHALL. Gentlemen, as I said, we do appreciate your testimony. A lot of the things you have mentioned have been mentioned as concerns by many Members of this subcommittee, on both sides of the Chair, throughout the course of today's hearing. Certainly,

we are concerned about the effects of this legislation on safety. That has been debated at length today.

We are also concerned about the effects of this legislation on the LTL, the small, independent mom and pop operation, even the $9 million payroll of Mr. Clark. We are concerned about the effects of Section 211 on those types of operations.

We also have learned today that there is very little disagreement that Section 211 as passed by the Senate was drafted in a very shoddy manner, to use the words of the Assistant Secretary; it seems to consist of stapled together provisions, and a lot of that needs clearing up before any final action by the Congress.

That is one purpose of today's hearings. We did not want to rush headlong and blindly accept the Senate provisions without having this hearing, hearing from as many parties as we could, and doing this in a deliberate, responsible fashion on this side of the aisle.

I think we all can agree, including yourselves and the panels that we heard from earlier today, that Section 211 is not well drafted; we have heard many proponents of the legislation agree with that as well. I have not heard any of the proponents argue against reworking the provisions to provide equal treatment for all motor carriers.

My question to each member of this panel—and I know, Jim, that you have answered this question already, but I just want to hear it from all the members of the panel.

In the event that the choice is between either Section 211 as it is, and I hope it does not come down to that—that is my personal opinion—or a properly crafted provision that preempts State economic regulation for all, and let me emphasize for *all* motor carriers, while clearly preserving the noneconomic State regulatory functions, what would be your choice?

I know your position is to not have Section 211 at all, throw the whole thing out, and go ahead and pass a clean AIP bill, but that is not a likely scenario either. So between those two choices, what would your decision be?

Mr. BOOZE. Well, of course, I don't like either one, but of the two positions, I would say the latter. Don't tie my hands behind my back and send me back out to Oregon to compete with UPS. You know, I will do my best to compete with them.

I don't really know whether I will stay in the business if 211 passes. I would seriously doubt it. I have been in the industry 32 years, but I think that I would probably get out of the business.

One point that I want to leave you with, though, hazardous materials are a real problem in this deregulation issue and what you are going to find is the small carriers, they run out to these communities, are not going to hold themselves out to handle hazardous materials any longer. Right now we are—we have to do it because we hold the State certificate.

Mr. RAHALL. Let me respond.

I spoke of the shoddy language of Section 211 and how it needs cleaning up, but that is one thing that is perfectly clear. Section 211 does exempt hazardous material and household goods transport; both would still be under regulation.

Mr. BOOZE. Okay, but what I am saying is you won't have carriers like me that will handle them anymore. I mean, we will get out of the business.

Mr. RAHALL. Okay, I understand that, but you are saying that you will go out of business if Section 211 is passed as it is. Again, if the other choice is that all motor carriers would be deregulated, would you still go out of business?

Mr. BOOZE. It is probably 80, 20, yes.

Mr. RAHALL. Do other panelists wish to respond?

Mr. HARKINS. Martin, go ahead.

Mr. FOLEY. I was hoping that this cup might pass.

Mr. HARKINS. You want me to take it?

Mr. FOLEY. NMFTA's policy is to oppose regulation at the Federal level and intrastate level, whether it is preempted by the Federal Government or what. That is current policy, which I have expressed to you.

I have also expressed the members' views that if you have to pass something, then tighten up the exemption to extend only to the area which started the problem to begin with, namely, the transportation over ground of air shipments of a very small size. I realize that doesn't address the question you asked.

I feel like the witness this morning, you are handing me a knife or a gun. Our board will be meeting in just a couple of weeks. If I could put you off for a couple of weeks, I can give you a definite answer, but I suspect that given the choice that you have given me, the board would very likely go toward the rational behavior of working the best possible language into creating something that everybody can do in a State.

Mr. RAHALL. We will let you pass on that one. We won't say what grade you get, but we will let you pass.

Mr. FOLEY. I won't submit anything for the record either.

Mr. HARKINS. Somehow or other, I feel I just got passed a cup, but that is fine. The Regular Common Carrier Conference at its June meeting recently had the subject up and we discussed the pros and cons of it.

At that particular point in time, the membership elected to stay with our existing policy, which is in opposition to the nature and scope of a 211-type provision. However, we have since written out and we have not gotten all of our responses yet from the carriers. Given the action taken over on the Senate side, we thought it important to try and get a second opinion, so to speak, with circumstances the way they are.

While I don't have all the answers, I feel confident to say to you, Mr. Chairman, that our carriers would be supportive of a program where they would be treated fairly vis-a-vis all of their other competitors and a program that would produce a greater freedom of entry and a greater flexibility of rate-making with a retention of the essential regulatory structure within the States in a way that it would be compatible with the existing Federal-type structure.

In other words, it would retain for the benefit of the standard business dealings of carriers on a day-to-day basis those elements of the regulatory process that are positive and procompetitive, but at the same time, it would be a program that would produce an

opening up of entry within the States, and essentially total flexibility amongst carriers with regard to rate-making functions.

Mr. RAHALL. You get a higher passing grade.

Mr. SEIMS. Mr. Chairman, I think those of us in the other Washington would also certainly look at something in the way of deregulation, but I think it is going to have to be thought out very carefully and studied very carefully. I think the way Section 211 has taken place is a horrible mistake.

I fear, however, that any sort of deregulation of intrastate traffic in the State of Washington, as Ken has said from Oregon, is going to have some very adverse impact on carriers.

Washington, like Oregon, has a eastern part of the State that has a population that is spread out over some distance, and I fear that having a carrier available that is going to service those communities is just not going to exist because it is not going to be compensatory.

But I think that anything we do at any State level, if it is going to happen, it better be handled very, very carefully and with some input from those people that are going to certainly be affected.

Mr. HOPPER. Mr. Chairman, real briefly, if those were the only two choices that we were faced with, I don't think the majority of our members would say they could live with either one of them. I think they would think they would be harmed by either one of those choices, so we would urge the committee to take a look at giving some other options other than those two.

Mr. RAHALL. Would your members say they would be harmed equally by either choice?

Mr. HOPPER. I think many of them would say they would be harmed equally by either one of those choices.

Mr. RAHALL. The gentleman from Arkansas?

Mr. HUTCHINSON. Mr. Chairman, you asked the very question that I would have asked. I think I will pass.

Mr. RAHALL. Chairman Mineta.

The CHAIR. I am sorry I wasn't here for the testimony, and I am trying to look through some of the testimony, but I was just wondering, to the extent that since you feel that this is to the detriment of the smaller intrastate carriers, I take it, is there any way to repair that? How can we broaden this to include smaller intrastate carriers?

You used the phrase "essential regulatory provisions," Mr. Harkins. What is it that we could do in order to protect them?

Mr. HARKINS. That is a wide open opportunity for me.

The CHAIR. Other than staying where we are at present law or rolling back Section 211 to just being Federal Express, UPS, and I guess RPS.

Mr. HARKINS. I appreciate the question, Mr. Chairman. I was just having a little fun with myself, I guess.

I really think that you have got to essentially toss 211 out because it carries too much negative luggage with it and rewrite a whole new set of provisions which would essentially be what I would, in thumbnail sketch, describe as sort of a codification for the States of the existing type of Federal regulatory process that we have and treat all of the carriers in the same way so that you would have, as I said, freer entry, you would have all the rate flexi-

bility the carriers felt they needed, and you would also then be able to retain the regulatory structure that so many people this morning spoke about that the industry was hoping to retain, including antitrust immunity for interline rate-making, antitrust immunity for certain rate-making for those carriers that need it; standard matter such as credit regulations, et cetera, and so on, and so forth.

You could keep all of those regulatory matters in the State structure, have them compatible with the existing Federal structure, which I don't think anybody has a problem with, and simply write the legislation so as to open up entry and make the rate flexibility of a level that would respond to the market as opposed to a regulatory process. And included in that, you could also deal with the matters that are under consideration now, such as mentioned by a few of the motor carrier individuals here earlier today dealing with whether or not you want to file tariffs.

I think we are all very happy that the negotiated rate and undercharge problem has been solved and we don't ever want to see anything like that to happen again. So I think that the matter of individual tariffs not having to be filed but posted, and whatever collectively made tariffs would continue to be made under the antitrust immunity could be filed (and that would probably be less than 100 tariffs on a Federal level and very few tariffs with regard to each State), and have that regulatory structure remain in place as a positive element of a competitive market that needs to know price information.

So I think that my opinion is that 211 as it is written right now has too many problems with it, and many problems that I think we have not even seen yet but would crop up later on so that a rewrite, giving specific language as to what you want to accomplish, is a much better route.

Mr. FOLEY. Could I just follow up to that response, Mr. Chairman?

I indicated that MNFTA is not opposed to regulatory reform, but it feels that it is essential that there be a more orderly and perhaps a little more timely, time-consuming for that matter, study and approach to what ought to be the best regulatory program for a State, and I think Jim has indicated that.

It is basically underway on the Senate side in the form of Senator Exon's bill, Senate Bill 2275, which outlines some general plans, and I think it was Mr. Clowe from Roadway Services who expanded on some suggestions to amend or to improve that general proposition, and it is that kind of undertaking that we would be very happy to participate in, a lot with Jim, and I am sure a lot of the other witnesses, to come up with the best possible vehicle for revising to whatever extent the Congress thinks is necessary, the intrastate regulation of trucking.

The CHAIR. And that is the study of the—the TRB study that you are suggesting? Was it your testimony that I saw something about——

Mr. HARKINS. That was our joint testimony, Mr. Chairman, yes.

The CHAIR. In reference to a 18-month cost-benefit study on the—on Section 211?

Mr. HARKINS. Correct.

The CHAIR. Let me ask, are there any provisions in Section 211, Mr. Booze, Mr. Clark, or Mr. Seims, that you would be able to qualify under in terms of this, whatever, this 15,000 times provision, or qualify as a freight forwarder? Is there anything you could do under Section 211 to fit into one of those provisions?

Mr. BOOZE. Well, I think there is—I have heard someone say that for $4,200, you mail 15,000 envelopes and you are deregulated basically. But I am a regulated carrier and I also handle about half of my business as interstate business going to those same communities out there.

I think if you wanted to take the bill in its present form, to get back to the question you asked, and find a way that it wouldn't hurt me as a small LTL carrier, and at the same time, do its thing for UPS and Federal Express, I would make it a small package bill. That would have virtually no effect on me. I would still be in the LTL trucking business.

The CHAIR. That would be, what, 50 pounds?

Mr. BOOZE. Fifty, whatever a guy can—didn't you say, something you can carry under your arm? See, they use different types of equipment than we do. We use straight trucks with lift gates because we have to deliver a refrigerator or something. I don't think they are interested in that type of business, but at the same time, there is nothing to stop them from opening up regular LTL operations in the State of Oregon.

The CHAIR. As I recall, when I was trying to float a compromise in the 103rd Congress, I think I used 150 pounds, and they said anything over—I think it was Fed Ex that said anything over 100 pounds, they would have to set up a two-tiered trucking system.

Mr. BOOZE. Right, that is correct. So give them what they want under 100 pounds and it wouldn't really have that much of an effect. It wouldn't throw the whole transportation LTL community upside down right now.

The CHAIR. Thank you very much.

Thank you, Mr. Chairman.

Mr. RAHALL. Gentlemen, thank you very much for your patience in being with us all day as you have been.

Well, who is left?

Everybody who is left can be on the last panel. We have had several that have had to leave and so they are submitting their testimony, which will be made part of the record. I will name the final witnesses who will be on this last panel; we are combining numbers 10 and 11.

Mr. Edward M. Emmett, President, National Industrial Transportation League, from Arlington, Virginia; Mr. F. Sheridan Garrison, Chairman, President, CEO, American Freightways Corporation, Harrison, Arkansas, on behalf of the Americans for Safe and Competitive Trucking, Washington, DC; Mr. Norm Langberg of Georgia Pacific had to leave. His statement will be made a part of the record on behalf of the National Association of Manufacturers.

Mr. Fred Kaiser of Kerrville Bus Company, Kerrville, Texas, on behalf of the American Bus Association, had to leave. His statement will be made a part of the record.

Also on this panel, Mr. Lawrence J. Day—is he still here? No. He had to leave. His statement will be made part of the record. He

is Vice President, Government and Legal Affairs Committee, Messenger Courier Association of the Americas, McLean, Virginia.

And Mr. Rick Schweitzer had to leave; he is with Zuckert, Scoutt and Rasenberger, Washington, DC, on behalf of the National Private Truck Council, Alexandria, Virginia. He had to leave and so his statement will be made part of the record also.

To introduce his constituent on this last panel, the Chair recognizes the gentleman from Arkansas, Representative Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman, and I am honored to make this introduction, and I want to welcome Mr. Sheridan Garrison to our subcommittee. And first of all, compliment you and commend you for your endurance and your patience today and for staying for this last panel.

And, Mr. Chairman, you mentioned several of the accomplishments of Mr. Garrison and I will simply add that he represents, I think, one of our great companies in Arkansas. He is one of the great success stories, and American Freightways has been a great corporate citizen in my State. They are involved in, I think, 14 different States and doing a marvelous job.

He today is representing the Americans for Safe and Competitive Trucking. I might add also, Mr. Chairman, that he hails from Harrison, Arkansas, which is the home of long time raking Member and our colleague and former Representative, John Paul Hammersmith.

And so, we are delighted to have you and thank you for being here.

TESTIMONY OF F. SHERIDAN GARRISON, CHAIRMAN, PRESIDENT AND CEO, AMERICAN FREIGHTWAYS CORPORATION, HARRISON, AR, ON BEHALF OF: AMERICANS FOR SAFE AND COMPETITIVE TRUCKING; AND EDWARD M. EMMETT, PRESIDENT, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, ARLINGTON, VA

Mr. GARRISON. Thank you, Congressman Hutchinson.

Mr. Chairman, distinguished Members of the committee, I am just glad to be here. It may be late, but I am still glad to be here.

I serve as Chairman, President and CEO of American Freightways Corporation, which is a regional and interregional, less-than-truckload carrier serving in interstate commerce, all points, in 14 States located in the Midwestern, Southeastern, and Southwestern regions of the United States, and serving in intrastate commerce, all points, in Arkansas, Kansas and Louisiana.

And when I say "all points," I mean just that. If we can get a tractor and trailer to it, we serve it, no matter how small the community, no matter how small the customer. American Freightways is a publicly held company, headquartered in Harrison, Arkansas. I am also a member of the Steering Committee of the Americans for Safe and Competitive Trucking, ASCT.

Mr. GARRISON. ACST supports all efforts that would lead to total economic deregulation for motor carriers. We support the action by the Senate in S. 1491, Section 211, the Federal Aviation Authorization Act of 1994, that would be regulate all modal air cargo carriers.

We believe that 211 is a step in the right direction. But we must recognize that we now have a unique opportunity to pass legislation to do away totally with all intrastate economic barriers for all motor carriers, not just those covered by that legislation.

We believe truckload and less-than-truckload carriers with no air freight forwarding operations, private carriers, most owner-operators, and other small carriers are currently shut out by the Senate bill.

The argument is made by these segments of the trucking industry that—I am sorry, the argument is made that these segments that I just mentioned of the trucking industry can become air freight forwarders. The trouble is there are no guarantees this can happen, and even if it does, it will most surely be at the expense of tremendous amounts of time and dollars attempting to satisfy the requirements of different States while those carriers favored initially by coverage under Section 211 of the Senate business make off with the freight.

A DOT official here this morning testified that passage of 211 with respect to air forwarders at least would have to be tested in court and lawyers would be busy for quite a while.

Having commented about the obvious inequities created by the special legislation 211, I believe it is time to move to a broader perspective. The real issue of deregulation of intrastate traffic is not about whose ox is being gored; it is about extending to all United States citizens a better standard of living, versus protecting the status quo for a chosen few. It is about efficiency versus waste. It is about a more productive United States that can successfully compete in the international economy. It is about jobs, good jobs at home rather than abroad.

It is about the right of our citizens to start a business. Without freedom of entry, that right is denied. The fight against intrastate deregulation has come from those within the trucking industry who already possess intrastate operating authority and want protection from the competition.

They say regulation benefits their citizens, assuring service to small towns, protecting small shippers and small carriers. The fact is that under 14 years of interstate deregulation, service to small towns and small shippers has been enhanced.

As for protection of carriers from competition, I know nothing about the trucking industry that makes it unique and deserving of protection from competition.

I can make a better case for a motor carrier to be protected from itself. Certainly many small carriers are succeeding better than their larger counterparts.

Protection creates a safety net which results in a cost-plus pricing scheme, in turn resulting in higher costs to the consuming public as well as industry. For a better standard of living and a better chance to compete successfully in a global economy, we have to wipe out the safety net at home. At home includes the States.

This can only happen through Federal legislation. The States are just too vulnerable to pressure from the favored few who hold intrastate operating authority.

It is difficult to comprehend why intrastate traffic deserves different treatment than interstate traffic. We are talking about the

same shippers, same products, same communities, same carriers, same trucks, same drivers, and yes, same citizens.

I have been in this business 35 years. I operated interstate and intrastate 24 years. I sold that business in 1979 partly because of economic regulation and the substantial resources consumed, fighting to obtain operating authority with which I could compete.

After interstate deregulation occurred, I started from scratch a new carrier in 1982, the one I represent here today. I tell from you my own experience and not from theory that those two operations are as different as day and night. It is a lot more challenging but more fun and rewarding to compete for business as we do today.

Sure, I want the chance to compete for more intrastate business. Competition is as American as our American flag itself. But what I want is not so important. I am not very experienced in getting everything I want.

But what is important is what is best for the citizens of this country. I think I have the background to predict that total economic deregulation of intrastate motor carriers will result in a more efficient national transportation system, to the ultimate benefit of the vast majority of our citizens.

That is reason enough for me to be here tonight. I started out today. That is reason enough to be here tonight to testify in support of Section 211 of Senate 1491, and its broadening to include coverage of all motor carriers, large and small, private, common and contract, express or not.

I appreciate your attention and I will be glad to answer your questions.

Mr. RAHALL. Thank you.

Mr. EMMETT. Good evening, Mr. Chairman. Thank you very much.

I appear this evening, very briefly, representing the National Industrial Transportation League. We are here to discuss Section 211, but I must tell you I feel like I came into a time warp from my days in the Texas legislature, when we were debating whether or not to allow UPS to provide service intrastate in the State of Texas. Texas was the last to do that. All these arguments came up. Gee, rural communities will be left out. It turns out rural communities were the ones that wanted UPS the most because that would give them some competition. Somehow safety is going to be hurt if you in any way allow this competition.

Well, we don't regulate restaurants economically in order to make sure that the food is safe. We do that through safety. So all of those arguments we have gone over.

I chuckled a little bit today when one witness at one point said, Big companies will run little guys out and then said small, shoestring operations will be able to undercut the big guys. I don't know which one is right, but I don't really think we were here today to discuss economic deregulation generally. The question is, why Section 211 and why now?

And if I could address that just very briefly, the Interstate Commerce Commission has defined interstate commerce on several occasions, and that is any movement that starts in one State and goes to another State, no matter if it changes modes and even goes

into a warehouse. The Federal courts have consistently upheld that ruling.

The State of Texas, my home State, the Railroad Commission consistently threatened shippers and carriers if they tried to abide by that Federal ruling. It is very much like the Civil Rights Act was in the 1960s. It is going to take Federal action to be sure that interstate commerce is protected.

That ultimately is what Section 211 is all about. Chairman Mineta I think very aptly described it. It started out this small and then somebody was just outside of the circle and you can keep expanding it.

And I certainly don't begrudge you having to decide where to stop drawing the circle. I think it would be the preference of the shippers clearly to go ahead and complete the economic deregulation task across the board and be done with it. Otherwise, we will be back doing this over and over and over again.

And that concludes my statement. Thank you, Mr. Chairman.

Mr. RAHALL. Thank you.

At this point in the record, I would like to submit a statement by the Partial Shippers Association in opposition to Section 211, and a statement by Current Incorporated, a direct marketing company, also in opposition.

In addition, I am submitting a letter to the Chair dated June 30, 1993, from the American Movers Conference, in which they support continued intrastate regulation of household goods and movers, and statements by Frito-Lay, the Truck Renting and Leasing Association, Inc., Greyhound Lines, Inc., Public Citizen and Teamsters Local No. 162.

[Please see additions to the record.]

Mr. RAHALL. Gentlemen, I have no specific questions for you. I appreciate your testimony. We have discussed this on a number of occasions and I understand your position quite clearly. And it will certainly be a part of our record as we go into deliberation with the Senate on this.

Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman. I have just a couple of closing questions. I will be brief.

Mr. Garrison, you addressed, as well as Mr. Emmett, in your testimony the issue about serving smaller communities, and that they really are not going to be negatively impacted or it is your belief they will not. Can you expand a little bit on intrastate deregulation?

What kind of assurances are there, in your experience at least, that they are not going to be hurt in those smaller communities?

Mr. GARRISON. I believe actually that deregulation has resulted in an increased importance of the small shipper, carriers being competitive and seeking additional tonnage and traffic and whatever, and to give the small shippers rates that are competitive with the large shippers. In our own case, we serve all points in all 14 States.

I can just, if I may for just a moment, we prepared testimony for the State of Texas in 1992, just to give you an example. We served towns in the State of Texas with populations of 14, populations not

large enough to be listed on the State, populations of 100, 140, 135, 80, 65, and so on.

Let me tell you very candidly and in all honesty, we serve every point we can get a tractor trailer to. We think that is a benefit to deregulation. We don't buy the argument at all that service to small shippers and small towns will diminish under this legislation.

Mr. EMMETT. There have been numerous studies certainly at the Interstate Commerce Commission of interstate once it was deregulated. There has been no evidence of diminishment of service to small communities. In fact, it has been enhanced. Specifically in Florida, there have been studies there, and there is no lessening of service to small communities.

Mr. GARRISON. If I may, Mr. Hutchison, expand on that one more moment, what we found is in intrastate carriage generally the carriers tend to divide up geographically the State. Maybe that is the way they started, but that has been the impact of it. We opened all points in Texas in 1987, in interstate commerce only, and we were the first carrier to serve all points in Texas in LTL service, less the truckload service, in spite of the fact that we were competing with carriers that had been in business in Texas for 60-odd years.

So there is nothing unique about serving small communities.

Mr. HUTCHINSON. One last question. If 211 were left as is, there are those who today have argued that a few basic steps in virtually every trucking company could become an air freight forwarder. What kind of changes do we need in 211 in order to really——

Mr. GARRISON. I don't really think we know yet, as the DOT official this morning testified. There will be a transition period during which, to paraphrase, there will be a lot of lawyers kept quite busy.

Mr. HUTCHINSON. So the simple thing would be to go ahead and broaden it, deregulate it and clarify now?

Mr. GARRISON. Yes. You are leading the witness, but that would be the simple thing to do.

Mr. HUTCHINSON. I am leading my constituent.

Thank you, Mr. Chairman. That is all I have.

Mr. GARRISON. Mr. Chairman, may I mention the fact that since preparing these statements I was contacted by the Arkansas Motor Carriers Association, of which I am a member of its board of directors, and the association asked me to represent them here today or tonight, and present their views, which would run parallel to my views.

Thank you very kindly for the opportunity to be here.

Mr. RAHALL. Thank you very much.

That concludes today's hearing. Stay tuned for further action.

The subcommittee stands adjourned.

[Whereupon, at 8:05 p.m., the subcommittee was adjourned.]

PREPARED STATEMENTS SUBMITTED BY WITNESSES

UNITED STATES HOUSE OF REPRESENTATIVES
PUBLIC WORKS AND
TRANSPORTATION COMMITTEE

TESTIMONY OF

THE HONORABLE KEITH BISSELL
COMMISSIONER
TENNESSEE PUBLIC SERVICE COMMISSION

ON BEHALF OF

THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
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ON

S. 1491
THE AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1994

JULY 20, 1994

(175)

I. INTRODUCTION

My name is Keith Bissel. I am a Commissioner with the Tennessee Public Service Commission and am currently President of NARUC, the National Association of Regulatory Utility Commissioners. The NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include the governmental bodies engaged in the regulation of carriers and utilities in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. The NARUC's mission is to improve the quality and effectiveness of state public utility regulation in America. Most of NARUC's members administer trucking regulatory programs under state laws which are patterned after the Interstate Commerce Act.

II. SUMMARY COMMENTS ON SECTION 211

The members of NARUC appreciate the opportunity to appear before you today to present the views of the state regulatory community regarding the Section 211 provision of the Airport Improvement Program bill (S. 1491). The intent of this amendment is to allow large motor carriers associated with air cargo companies to escape state regulatory laws. The justification for such an unfair bill to benefit the largest trucking companies in the nation at the expense of small carriers is hard to fathom under the best of circumstances. However, 211 is so broadly written that it effectively deregulates virtually all intrastate motor carrier freight transportation. Indeed, the recent attention to defunding the Interstate Commerce Commission, along with the Section 211 provision, has converted this amendment into a debate on whether to totally deregulate trucking in America, at both the state and federal levels.

The NARUC opposes the Section 211 provision in the strongest possible terms. What started out as an airport improvement bill was suddenly and almost surreptitiously converted into a vehicle to abolish state trucking regulation. Coming on the heels of the House vote on the ICC's budget, we believe Congress is now being stampeded into making a decision that will have a profoundly

negative effect on the transportation system of this country. Special interests are pressuring Congress to terminate a regulatory structure that has been in existence since the 1930's, and to do so with totally inadequate consideration of the consequences that decision will have for tens of thousands of companies and hundreds of thousands of Americans.

Section 211 is not only bad legislation, it is so poorly drafted as to qualify as remarkably bad legislation. Congress should delete this provision from the airport bill and subsequently address the many complex issues it raises with the thoughtful attention they deserve. There is no reason Congress must deal with this matter in such a hurried fashion.

Indeed, the chorus of calls for state preemption consists of an abundance of cliches (e.g., "unfettering the shackles of state regulation", "patchwork quilt of regulation", etc. ad nauseam) and a shortage of facts. Congress has rarely been assaulted by so many tired pejoratives, expressed with such shrillness, intended to mask the lack of substance of their underlying arguments.

Congress should resist these pressure tactics and, for the time being, maintain the current regulatory system. Later, adequate time can be devoted to a thoughtful consideration of the many complex issues which regulatory reform raises. NARUC agrees that a review of state and federal regulation is needed and that a greater harmony can be achieved. However, taking a meat axe to current regulatory law is a grossly inappropriate response to whatever problems this legislation is intended to address. And the manner in which this provision has found its way to a Conference Committee vote raises the public's level of cynicism about the fairness and openness of the legislative process.

III. SPECIFIC REASONS 211 IS BAD LEGISLATION

Section 211 is a total deregulation bill which goes even farther than the interstate "regulatory reform" of the 1980s. The chaos which resulted from that administrative adventure is something the states do not want to have imposed on them by

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Congressional mandate.

1. Deregulation will jeopardize thousands of small and medium sized trucking firms throughout the country. They will be bankrupted by the frenzy of new competitors cherry picking the traffic existing carriers rely on for survival. The result will be the layoff of thousands of people, which is exactly what happened at the interstate level during the 1980s. The Illinois Commerce Commission (ILCC) estimates that 51,000 people may lose their jobs in Illinois alone.

2. The surge in bankruptcies will corrode the margin of safety for truckers and the motoring public which shares the road with them. Deregulation will erode safety, notwithstanding specious assertions that the link between safety and regulation cannot be proven. It is counterintuitive to think that carriers can be driven into insolvency while their expenditures for costly safety investments remain unaffected.

3. With deregulation rural areas and small volume shippers will experience a degradation of service and higher prices, thus threatening their ability to profitably participate in the emerging global economy. Rural service was thought to "improve" for a while after interstate deregulation because a wave of new market-hungry interstate operators flooded the intrastate market. But these carriers merely supplemented the service already provided by state licensed intrastate carriers. Rural service is generally unprofitable because traffic volumes are low and there are few backhaul opportunities to generate compensating revenues. Service to rural areas deteriorated when other modes of transportation were deregulated, despite assurances to Congress by deregulation advocates that it would not happen. The same will inevitably occur if trucking is deregulated.

4. With deregulation, publicly disclosed rates and services, nondiscriminatory practices, and consumer protection will be replaced by secrecy, discriminatory pricing practices, unethical behavior, and outright consumer abuse. Under deregulation large

shippers have the market power to exact supercompetitive rates and terms which their smaller competitors cannot get. Under a regulatory program, large shippers already receive volume discounts, i.e., lower per unit rates for larger tenders of freight. These lower charges are justified on the basis of cost. There is no justification for additional secret rebates, and still lower per unit rates for large shippers merely because of their market dominance.

5. Federal preemption of long-standing state programs is totally inappropriate. If some parties believe a particular state's program is burdensome in some fashion, they are free to petition the state legislature for amendment to the law. Further, the deregulation experiment its proponents have deemed such a success has not persuaded many state legislatures. The thousands of bankruptcies, layoffs of tens of thousands of people, safety deterioration, discriminatory, unethical, and often fraudulent practices, and the national undercharge fiasco, were all the consequences of federal deregulatory actions. Few of those problems occurred at the intrastate level because states restrained the urge to embark on deregulatory adventures.

For Congress to now punish the states for successfully administering their programs; to abolish state programs and reserve residual jurisdiction for a troubled federal bureaucracy which caused many of the problems in the first place; to do so in panicked haste and with no forethought; and to justify it all based on evidence which is shoddy at best and patently ridiculous at worst, throws federalism out the window.

IV. CLAIMS ABOUT REGULATORY COSTS AND DEREGULATORY BENEFITS

Congress should view the wildly exaggerated claims about the alleged costs of state regulation, and supposed benefits of deregulation, with disbelief. While the states admire the creativity and imagination which deregulation proponents have used to concoct their "estimates", their results are so far beyond reality's pale as to defy credulity. Many of these estimates

exceed by several multiples the total gross revenues of all state licensed trucking companies! Evidently the hope is that their numbers will gain credibility through repetition. Congress should ignore these exercises in hyperbole.

Past congressional hearings on the subject of the effects of transportation deregulation are instructive. The states argue that deregulation will result in a great reduction in service to rural communities. Advocates of deregulation argue just the opposite. What has happened in the past?

Congress should review the experience of bus deregulation when it is told truck deregulation will not result in deterioration of service to rural areas. Fourteen years after intercity bus deregulation, studies have shown that service to small communities has declined, while prices have increased (see Dempsey, Running on Empty: Trucking Deregulation and Economic Theory (1990)). Deregulation of other modes of transport has similarly resulted in reductions in service to small communities, despite predictions to the contrary made by champions of "regulatory reform." Testimony by proponents of the Bus Regulatory Reform Act of 1982 (BRRA), at the hearings before the Surface Transportation Subcommittee, which prognosticated improved service to small communities, should be compared with subsequent reality.

For example, at the 1981 hearings Mr. Cornish Hitchcock, representing the Transportation Consumer Action Project, blamed I.C.C. regulation for the facts that in the decade prior to 1981 1,800 communities had lost bus service, and that rural customers paid higher than average fares. Because there are no economies of scale in the intercity bus industry, he argued, lots of smaller, efficient bus companies would spring up to provide service over routes abandoned by formerly regulated carriers. Also, he said "it should be noted that the bus industry, unlike the airline industry, should find it easier to provide service to rural communities. Airlines can avoid serving a city by flying over the community; a bus company, by contrast, is likely to travel through many

communities, and new service can often be provided simply by stopping at an intersection and opening the door. The marginal cost of serving an extra point in this fashion should be quite low."

These naive or self-serving statements should be compared to the reality of bus deregulation in the twelve years since the adoption of the BRRA. What followed, according to the U.S. General Accounting Office (GAO), was "a wave of abandonments...as intercity carriers, no longer hindered by state regulations, eliminated unprofitable routes and stops." (Surface Transportation: Availability of Intercity Bus Service Continues to Decline (1992). Although the number of locations served by intercity busses had been declining for years prior to the BRRA, state regulation made it difficult for carriers to abandon entire routes. After state regulation was preempted, however, the rout was on. By 1991, according to the GAO, an estimated 52% decline in the number of locations served occurred, predominantly locations with populations of less than 10,000. As of November, 1991 the GAO estimates 5,690 locations served, down from 11,820 in 1982.

Despite the rosy predictions of the advocates of regulatory reform, ten years after the BRRA, the GAO was able to conclude not only "[r]egulatory relief for the intercity bus industry in 1982 did not revitalize the industry nor stem the long-term decline in regular route bus service," but also that the effects of the decline were felt most heavily in rural areas and by those with the least access to transportation alternatives.

Many factors in addition to deregulation have contributed to the decline of the intercity bus industry in this country. However, with regard to rural America, deregulation of buses, railroads, air carriers, and interstate trucking have all taken their toll. There is every reason to believe that deregulation of intrastate trucking will only serve to further isolate small communities, increasing the outmigration of jobs and investment to larger urban areas. Our federal system should allow states to fashion policies designed to protect the economic viability of

rural areas, and trucking regulation is an important part of any such policy determinations.

Clearly, Congress should view the optimistic predictions of life under deregulation with healthy skepticism.

V. SECTION 211 REVIEWED

Section 211 preempts any state, or political subdivision thereof, from regulating the rates, routes or services of a particular class of motor carriers. It is the possible breadth of that particular class of motor carriers which makes the bill, in effect, the vehicle for virtually total preemption of state regulation of intrastate motor carriers.

On its face, this bill would preempt only the motor carrier activities of an "Intermodal all-cargo air carrier," defined in the bill as one of two types of carriers. In the first definition, such a carrier is "an air carrier (including an indirect cargo air carrier, as defined in section 296.3 of title 14, Code of Federal Regulations..." when transporting property, pieces, parcels, or packages between States or wholly within any State by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

An argument has been offered by the American Trucking Associations (ATA) that, under this definition, any motor carrier of property would qualify for the exemption by claiming to be an air freight forwarder. While the definition of an indirect cargo air carrier certainly includes the activities of a traditional air freight forwarder, it would be ridiculous to suggest that any carrier could assert to being an air freight forwarder. Notwithstanding the fact that air freight forwarders have not been licensed since 1986, thereby precluding any "official" recognition of the title, it is inconceivable that such a definition would be broader than that of an indirect cargo air carrier.

Section 296.3 of title 14, Code of Federal Regulations defines an "indirect cargo air carrier" as

"...any U.S. citizen who undertakes to engage indirectly

> in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation or the Civil Aeronautics Board, or the services of its agent, or of another indirect cargo air carrier".

Simply claiming to be an air freight forwarder does not make one an indirect cargo air carrier, which by definition, requires some action, albeit limited, to actually move something by air. It is hard to imagine a sand, rock, and gravel hauler moving anything by air.

Notwithstanding the above, however, the fact that the ATA has raised this issue would indicate that litigation could be anticipated concerning the interpretation of this part of the bill. Such litigation would be expected to be a lengthy process with no assurances that the courts would agree with the states.

In the bill's second definition, an Intermodal all-cargo air carrier means any other carrier which "....(I) is affiliated with an air carrier described in subparagraph (A) through common controlling ownership, or (II) utilizes as principal or as shipper's agent, or is affiliated through common controlling ownership with companies that utilize, an air carrier described in subparagraph (A) at least 15,000 times annually..."

This definition is also open to interpretation. The phrase which provides that such a carrier is also any other carrier which "...utilizes ...an air carrier ...at least 15,000 times annually" does not specifically require that such use be directly associated with the movement of property in the course of the carrier's daily transportation business. Therefore, this might suggest that if, for example, an intrastate petroleum carrier sends 15,000 letters by mail in the course of a year, it could qualify as an "Intermodal all-cargo air carrier" and thereby be exempt from state

regulation.

If this were the case, for $4,350 per year, a carrier could send 15,000 letters to unknown individuals in California and satisfy the literal meaning of the definition of an Intermodal all-cargo air carrier. It is absurd to believe that this is Congress' intent.

Given the unknowns concerning the possible interpretations of the bill, it is impossible to determine its effect on various states. If, however, one was to accept the worse-case scenario, the interpretation of the bill as a total elimination of intrastate regulation, one could then expect the same disastrous effects on the intrastate trucking industries and economies of the states as have actually been documented on the Federal level since the deregulation of interstate trucking in 1980.

VI. WHY NOT TOTAL DEREGULATION?

The inevitable question arises, even if Section 211 is a total deregulation bill, what's wrong with that? Interstate deregulation is said to be an unqualified success, so shouldn't more deregulation lead to even more benefits?

After interstate deregulation, trucking, an industry which had been characterized by uncommon stability, suffered financial ruin. As Table 1 shows, bankruptcies have reached stunning proportions since the Motor Carrier Act of 1980. Trucking failure rates, including carriers which simply stopped operating as well as those which declared bankruptcy, went from being virtually identical to all industry generally, to a point ten years later where they were 83% higher than industry generally. NARUC's state members hardly consider these figures to be indicative of a successful public policy, and clearly do not want their intrastate trucking industries "reformed" in a like manner.

TABLE 1

Year	Trucking Failures Number	Trucking Failures Rate	All Industry Failure Rate	Ratio Trucking Rate To All Ind
1978	162	24.2	24	1.01
1979	186	27.2	28	0.97
1980	382	52.9	42	1.26
1981	610	81.2	61	1.33
1982	960	121.3	88	1.38
1983	1228	147.5	110	1.34
1984	1411	180.7	107	1.69
1985	1541	191.1	115	1.66
1986	1561	183.6	120	1.53
1987	1345	151.5	102	1.49
1988	1242	141.8	98	1.45
1989	1263	117.6	65	1.81
1990	1593	137.9	76	1.83
1991	2323	178.3	107	1.67
1992	2230	142.0	110	1.29
1993	1647	106.0	96	1.10

Source: Dun and Bradstreet

Further, interstate deregulation caused such a heightened public concern for safety that Congress was compelled to pass the Motor Carrier Safety Act of 1984, requiring state and federal inspections of the many thousands of underfinanced interstate trucking companies scratching out a living under the new federal policy. The states reject the notion that Congress should impose these same safety concerns on the states in an intrastate re-creation of the 1980s.

VII. WHY DO STATES REGULATE TRUCKING IN THE FIRST PLACE?

To put state regulation into perspective, it is necessary to understand why the states implemented regulatory programs in the first place, and in fact, why Congress did the same for interstate transportation.

The trucking industry has historically been viewed as one which does not require a significant capital investment to initiate operations. As stated by Professor D. Phillip Locklin, ("Economics of Transportation", Richard D. Irwin, Inc., Publisher, 7th Edition, 1982), in the absence of entry controls, "there is a tendency for overcapacity to develop and persist ... [that] ruinous type of competition does develop; discrimination in rates does appear; ... and the struggle for survival in the face of inadequate revenues leads to the deterioration of safety standards, evasion of safety regulations, financial irresponsibility, and generally unsatisfactory service."

The experience of the 1980's has confirmed the validity of each of Professor Locklin's points. Non-compensatory rates which plague a federally deregulated trucking industry not only lead to eventual carrier bankruptcies, but have a repeated dire effect on the safety of carrier operations. All too often, marginal carriers have deferred maintenance with the consequence that unsafe equipment is operated over the roads and ultimately involved in serious accidents.

Prior to Congress' enactment of the Federal Motor Carrier Act of 1935 considerable instability pervaded the industry. The Interstate Commerce Act was designed to foster sound economic conditions in the industry through appropriate controls on entry (by the application of statutory standards including proof of public convenience and necessity, financial and safety fitness, etc.) regulation of carrier rates and charges, and the extension of credit to shippers. Rate regulation was designed to ensure that carrier pricing would be both just and reasonable as well as compensatory. Congress intended that fostering such conditions in the industry would operate to the benefit of shippers, and

ultimately this nation's consumers, by the continued availability of reliable transportation services. State laws reflect the same values.

However, the federal approach parted company with the states beginning in 1980 when the Interstate Commerce Commission started administering regulation under the rubric of the Motor Carrier Act, and under that scheme, endeavored to deregulate the trucking industry through administrative means. Its efforts met with success. That is, the ICC became a mail order house for operating authorities, allowed rates to be filed without serious oversight, and continued to merely accept insurance filings. Accordingly, there is little meaningful interstate trucking regulation left, and it therefore is understandable why some in Congress believe the ICC has worn out its welcome.

The states, however, while maintaining their basic regulatory approach, implemented changes as local conditions warranted. This has resulted in some variation in how these programs are administered, but in our view, the states continue to be more responsive to the public than is the federal government.

VIII. ATTACKS ON STATE REGULATION

Nevertheless, the state programs have been the subject of continuous unfair criticism from advocates of deregulation. Interest groups which would profit from deregulation have mounted a continuous propaganda campaign, using periodicals such as the Wall Street Journal, Business Week, and others as vehicles for their messages.

We use the term "propaganda" in the paragraph above because the content of these articles or editorials are almost universally half-truths, or worse. When confronted with a challenge to prove their accusations, these authors are almost never able to do so. It appears many deregulation advocates have concluded that the subject of regulation is so complex neither Congress nor the public will understand it, therefore they can get by with fabrications instead of facts in their writings.

The "study" that is most often referred to by deregulation advocates is the U.S.D.O.T. study entitled "The Impact of State Economic Regulation of Motor Carriage on Intrastate and Interstate Commerce". This study purports to show that state regulation costs the national economy $2.9 billion a year. Further analysis of this study by several states as well as the National Regulatory Research Institute (NRRI) has revealed serious flaws in the study's methodology. Congress will be asked to accept the validity of these numbers by deregulation proponents, however, careful review of the U.S.D.O.T. study will reveal that its conclusions are groundless.

IX. ETHICAL CONSIDERATIONS OF DEREGULATION

Federal deregulation has introduced an era of very questionable ethical behavior in some parts of the transportation world and this is yet another reason the states strongly oppose preemption. Kickbacks, off-bill discounting, bribery and fraudulent practices are all-too frequent, as discussed in a very candid article in the March, 1994 issue of Distribution Magazine. Several quotes from that article illustrate the point:

"Off-discounting billing has caused so much distrust and misunderstanding. The fact that the ICC has allowed such blatant discount kickbacks under the guise of euphemistic terms (poses a dilemma for) any thinking man with any stirring of ethical thought." ---Jim Ordowey, Ordowey Frazar Cartage, Hartland, Wisconsin.

"The best way to end under-the-counter payments would be to prosecute those demanding those payments." ---Bernard Shesta, Masters Gallery Foods, Plymouth, Wisconsin.

"Roll back tariff rates! With discounts of 45% to 65% and above, it is obvious that rates have been overpriced for many years. Small shippers have subsidized large-volume shippers (and their numerous perks) for many years. Carriers should realize that

volume and profit do not go hand-in-hand. Let's provide an even playing field for all shippers!" ---Diane Fisher, Bondline Adhesives, Evansville, Indiana.

The Distribution Magazine article, entitled "Shame", citing a survey of 400 transportation professionals, states that shippers are frequently using their clout under deregulation to leverage carriers into non-compensatory rates. The survey also revealed shipper discomfort with the widespread practice of off-bill discounting (where discounts are not shown on the freight bill, thus allowing higher freight costs to be secretly passed on to customers than were actually paid). Shippers are also disturbed by motor carrier kickbacks to traffic managers to secure freight.

Congress must understand that it is only through continued enforcement of the filed rate doctrine that these abuses can be controlled. Legislation to eliminate the filed rate doctrine is totally inappropriate. As Congress learned in the undercharge disaster, the filed rate doctrine must be enforced. Only the states have the capability of enforcing it, which is yet another reason federal preemption should be unthinkable.

X. WHAT SHOULD CONGRESS DO AT THIS POINT?

Besides tabling the Section 211 bill, the Congress should direct the Interstate Commerce Commission to work cooperatively with the states to craft a modernized regulatory system for the balance of this century and into the next. During 1985 and 1986 a NARUC Task Force conducted a dozen meetings across the country in an attempt to design a uniform national approach to regulation. To the states' chagrin, the ICC declined to participate or cooperate with the states at that time. Now a new Commission, under its able Chairman Gail McDonald, can play a constructive role in addressing the real need to harmonize state and federal regulation. Harmonization and cooperation should be the goal, not a nihilistic destruction of regulation.

NARUC believes the following further steps are necessary to restore some sense to the regulatory debate.

1. Congress should repeal the court mandated advantage Federal Express has over United Parcel Service by clarifying that the Airline Deregulation Act was never intended to deregulate Federal Express' intrastate trucking operations.

2. Congress should table the Section 211 legislation and address the question of regulatory reform in a more calm atmosphere.

3. Congress should restore funding for Interstate Commerce Commission motor carrier regulation or, as an alternative, delegate this national responsibility to the states.

4. Congress should create a state/federal/industry working group to evaluate what a modernized state-federal regulatory system should consist of, and insist on recommendations within a year.

5. Congress should retain the Filed Rate Doctrine and promote Electronic Tariff Filing of rates.

6. Congress should encourage the states to enforce, through a program of on-site auditing, filed intrastate and interstate motor carrier rates.

EASTERN OREGON FAST FREIGHT, INC. AN OREGON COMPANY

Ken Booze, President
Eastern Oregon Fast Freight
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HOUSE PUBLIC WORKS SUBCOMMITTEE TESTIMONY:

SB 1491 and Deregulation of Intrastate Trucking

My name is Ken Booze and I am President of Eastern Oregon Fast Freight. I also serve on the Board of Directors for the Oregon Trucking Associations. I am here today on behalf of my colleagues who have asked me to represent our state's trucking industry which is made up of 28-thousand carriers who provide good family-wage jobs to nearly 89-thousand Oregonians.

My company employs 97 people and generates revenues of 5-million-dollars a year. We serve the many widespread rural communities and small towns of Central and Eastern Oregon -- areas that have a tremendous stake in your deliberations here today.

The current threat by Congress to preempt states' rights to regulate intrastate trucking is of grave concern to my company, my colleagues and my customers for a number of reasons, not the least of which is that we believe states must be able to continue to regulate -- or not regulate -- the trucking industry as best suits their citizens' particular needs.

The current deregulation proposal contained within Section 11 of Senate Bill 1491 will prove disastrous for small businesses and consumers. Let me explain some of the key reasons why...

• **Small towns and smaller shippers will become the victims of price discrimination.**

As a result of interstate deregulation, off-the-beaten path locations and smaller shippers who have little clout with carriers now pay premium prices while larger companies receive heavy discounts -- for the same service! With intrastate deregulation, state regulatory agencies will no longer be able to ensure that all trucking customers receive fair treatment. Small businesses, which employ almost 90 percent of our state's -- and our nation's -- workforce, will be competitively disadvantaged as a result of being forced to subsidize large corporations' shipping discounts.

• **Currently-viable small trucking companies just like mine will be plunged into bankruptcy, throwing tens of thousands of Americans out of work.**

Interstate deregulation resulted in widespread trucking company failures. In fact, motor carrier bankruptcies reached an all-time high of nearly 1,600 in 1990 alone. The result was thousands of employees losing good, family-wage jobs. Intrastate deregulation inevitably will result in predatory pricing by the largest carriers which will drive thousands of small and medium-sized companies out of business, forcing tens of thousands of Americans out of work. My company is one of those who'd be forced to shut its doors -- and my 97 employees will lose their jobs.

• Under deregulation, shoestring trucking operations will become rampant and states won't be able to ensure that companies are financially stable and safe.

Deregulation of intrastate trucking will destablize the marketplace. Both the shoestring operations intent on undercutting the competition -- and the existing companies that are plunged in financial distress due to that undercutting -- will have fewer dollars to spend on safety and maintenance. Companies in dire financial straits also are more inclined to speed and violate hours-of-service rules in order to stay afloat financially. As a result, the motoring public will face increased danger on the road. In fact, a 1991 GAO study revealed that trucking companies in the weakest financial condition have the highest accidents rates of all trucking operations.

• Rural areas will no longer receive adequate shipping and delivery of critical goods and services.

Two-thirds of Oregon's communities rely solely on trucking companies like mine for delivery of their essential goods. With intrastate deregulation, our small towns that are located outside of the more profitable freight corridors will lose crucial, cost-effective delivery of these goods. The service that would remain to those areas would cost far more, creating a financial hardship for residents, particularly for those in already hard-hit, economically depressed communities. Current intrastate regulations ensure that Oregon's rural regions receive reliable service at a fair price.

• States will lose the ability to protect their citizens who rely on the trucking industry for safe, dependable shipping services at a reasonable cost.

Each state has different needs regarding transportation services and it is only appropriate for state legislators and other officials to have the right to tailor their intrastate regulations based on what they deem to be in their citizen's best interests. In Oregon in recent years, state legislators have debated the issue of economic regulation three times, and all three times, they have reaffirmed their commitment to maintaining regulation of intrastate trucking. They have determined that regulation is in the best interest of all Oregonians.

# # #

In closing, the Oregon Trucking Associations Board of Directors and members urge you to prevent federal preemption of intrastate trucking regulations. Otherwise, the toll on our industry, our economy, our small towns and small businesses, and our highways will be devastating. The price for all of us is simply too high to pay.

Thank you.

STATEMENT OF THE

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

BY

RONALD J CAREY

GENERAL PRESIDENT

BEFORE THE

SURFACE TRANSPORTATION SUBCOMMITTEE

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

UNITED STATES HOUSE OF REPRESENTATIVES

JULY 20, 1994

ON

THE PREEMPTION OF STATE MOTOR CARRIER LAWS

TESTIMONY ON SECTION 211

Good morning, Mr. Chairman and Members of the Subcommittee. I am Ron Carey, General President of the 1.4 million member Teamsters Union.

I am pleased to have this opportunity to testify on behalf of the more than half a million Teamsters who work in the transportation industry, and the rest of our members, who like every other American, are affected by the laws and regulations that govern surface transportation policy.

We represent over 160,000 UPS employees. Another 60,000 Teamster members work for the "Big Three" Less-Than-Truckload (LTL) carriers -- Roadway, Consolidated Freightways (CF) and Yellow Freight. These are the most powerful companies in the industry and the ones whose management will benefit most from Section 211, along with nonunion companies like Federal Express and Overnite. We also represent thousands of workers at smaller trucking companies whose companies stand to lose the most from passage of Section 211.

Trucking laws and regulations affect the price we pay for goods and services, the availability of good paying jobs and the general health of our economy, and the safety of our families on our nation's highways. It is critical that any change to these laws be thoroughly researched and debated to ensure that the interests of all Americans are served.

The Teamsters strongly oppose Section 211. It is a patchwork transportation policy which will benefit management at a few powerful companies, but will have serious consequences for the American people.

We must not make national transportation policy through back room deals and amendments hidden in little known pieces of legislation. Instead, we need a complete review of the impact of transportation regulations and policies that have been in place the last 15 years.

We need a new set of progressive policies that meet the needs of everyone affected by surface transportation: workers, carriers, shippers and the American people. The Teamsters are committed to working with Congress to achieve this goal.

One road we might follow is contained in a recent study by Cornell University researcher Dr. Michael Belzer.

Dr. Belzer's study provides a comprehensive review of the impact of trucking deregulation in the 1980s, and also provides insightful recommendations that can take our transportation policies into the 21st century.

I have provided a copy of this study to the committee for your review, but allow me to quickly summarize some of his recommendations.

Dr. Belzer recommends that any new regulatory framework should minimize the burdens on all

trucking companies, while improving conditions for the millions of Americans who work in this industry.

This would include actions to protect the wages and employment security of the workforce, modernizing hours-of-service rules to maximize safety for truck drivers and the public, and strengthening collective bargaining in the industry.

These steps would help strengthen the entire American transportation system, instead of consolidating the power and wealth of management and stockholders of a few large companies, the way Section 211 will.

There will be few winners and many losers in the freight industry if Section 211 passes.

The top layer of management and stockholders at the largest companies will benefit. But compare that tiny group of alleged winners with those who could lose with the passage of Section 211.

There is absolutely no evidence to show that American consumers will benefit from a plan like Section 211. Earlier deregulation has not produced any direct benefits or lower costs to the public.

Employees at the companies supporting Section 211 could also be losers. If 211 passes, these companies will be able to further monopolize the market, and use this increased power to put downward pressure on their workers' wages and working conditions under the guise of dealing with cutthroat competition that they themselves establish

Their coordinated pressure against decent wages would affect hundreds of thousands of workers and their families, and threaten their ability to be productive, tax-paying members of the community.

Highway safety could also be a loser under Section 211.

The pressure from these transportation giants could force responsible small and mid-size companies off the road, opening the door to less responsible operators.

The past 15 years of experience have shown that some operators sacrifice safety to cut costs by poorly maintaining their vehicles, forcing their drivers to work long hours, and demanding that their drivers carry overweight and dangerous loads.

Whenever companies have won deregulation in the past -- as we can see from the freight and airline industry examples -- the workers in those industries and the public have taken it on the chin.

In freight, real wages have gone down. More than 150,000 jobs with decent wages and benefits have been lost. Hundreds of companies closed, while low-wage, low-benefit companies expanded. The losses in wages to workers and taxes to our communities is estimated in the billions of dollars.

That is the legacy of earlier deregulation. That could be the legacy of Section 211 also.

Ladies and gentlemen, Section 211 is bad for America.

Instead of being part of a comprehensive transportation policy assessment, it is a patchwork policy delivered to you by a small number of wealthy corporate managers and shareholders who are the only ones who will benefit from it.

Section 211 will produce losses across this country -- whether it's unsafe highways, small companies forced out of business by giant monopolies, or workers facing downward pressure on their wages and working conditions.

The Teamsters want to work with you and your colleagues in the House and Senate to develop a new transportation policy for our country. We urge you to reject Section 211 and instead to move forward with a comprehensive plan for our transportation system for the 1990s and the next century.

Thank you.

BEFORE THE
HOUSE OF REPRESENTATIVES COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

HEARINGS ON LEGISLATION TO PREEMPT STATE MOTOR CARRIER REGULATIONS PERTAINING TO RATES, ROUTES, AND SERVICES

STATEMENT OF

DARYL E. CLARK
VICE-PRESIDENT OF TRAFFIC
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JULY 20, 1994

My name is Daryl Clark. I reside at 861 Gettysburg Court, Bourbonnais, Illinois 60914. I am here representing Rudolf Express Co., an intrastate motor carrier of freight with headquarters in Bourbonnais, Illinois. I speak for other intrastate less than truckload carriers as well. I have been with my company for 44 years and have served as Vice President and Director of Traffic 25 years. Rudolf Express is a union carrier with Illinois Intra-State Authority in Illinois and Indiana. It also has interstate authority. Twenty five percent of our total revenue is from intrastate traffic. Our annual payroll is approximately $9,000,000. Our 1993 contributions to the union pension plan was $743,000. We also pay 100% of hospitilation for our employees and contribute to a 401K plan for our non-union office employees.

I appear in opposition to proposed Section 211 (Intermodal All Cargo Air Carriers) of the Federal Aviation Authorization Act of 1993.

I first want to thank this committee and its chairman for the privilege of appearing here today in an effort to show this committee how grossly unfair Section 211, as proposed, is to the smaller intra-state carriers.

Section 211, as presently drafted, exempts large carriers such as UPS and Federal Express from state regulation as to rates, routes and services. If Section 211 is enacted, large

carriers of freight will be permitted to charge rates that are not compensable or regulated, transport freight anywhere within a state, accept only the freight they deem desirable for their operation, reject freight they deem undesirable for their operation. The smaller intrastate carriers, however, will be regulated as to the rates they must charge and they must accept freight tendered to them by a shipper, whether desirable for their operation or undesirable. Section 211 will permit UPS, Fed Ex and other large carriers to accept freight only from large shippers to which they may give an advantage over small shippers, because these large carriers are unregulated. So you see, Section 211 not only affects the smaller intra-state carriers, but also small shippers.

The effect of the provisions of Section 211 on the vast majority of "Less Than Truckload Carriers", (LTL) which do not have a corporate affiliation with an air carrier or which do not use an air carrier at least 15,000 times annually, is catastrophic. Most LTL carriers will not meet the criteria set out in Section 211. Most LTL carriers, if Section 211 is enacted, will be competing against totally unregulated giants under the most unfair and unbalanced competitive environment.

Thus a double standard in the motor carrier industry will be created to the benefit of the larger carriers and the detriment of

the smaller intra-state carriers. This amounts to pure discrimination

An example of such discrimination is as follows:

> Large Carrier A, who is unregulated under Section 211, approaches Shipper B and because A is unregulated, it can cut rates which would not be compensable in order to get the freight from small Carrier C until competition from small Carrier C is eliminated. Then large Carrier A can raise its rates to what the traffic will permit. When smaller intrastate Carrier C is eliminated and eventually goes out of business, its employees are laid off, it no longer buys trucks and products necessary to conduct its business. The smaller carrier is destroyed, its employees are out of work and all the advantages to the economy, the state and the nation of a small business are gone.

Proposed Section 211 is, at its best, a power play by the large trucking interests to destroy the smaller interstate truckers and by all standards of equity and fairness is reprehensible.

Most economists agree that small businesses create more jobs then big business. Most of the carriers I am pleading for

started out as one family operations with one or two trucks many years ago and through hard work and frugality have had their dreams of education for their children, a little laid away for the later years and the ability to pay their taxes realized. I ask you to not take this away from them for the sake of the powerful large trucking interests such as UPS and Fed Ex who have the resources to effectually lobby the Congress.

As late as a a year ago, the Congress looked at deregulation of the Motor Carrier industry but rejected same and instead passed the Negotiated Rates Act of 1993 which resolved some of the problems that shippers and motor carriers were experiencing. The President signed into law that Act as recently as December 3, 1993 and now, the large trucking interests, just eight months later, are once again asking for total deregulation. One thing you can say for the large trucking interest's, their lobbyists are fast workers.

I was taught during my elementary education, that the Congress was intended to be a buffer, so to speak, between the rich and the poor, the advantaged and the disadvantaged, the powerful and the weak. That most power should be reserved to the states and not interfered with by the Congress except in a great emergency.

If this is what the founders of our great nation had in mind, then how can the Congress take the side on this issue of the

rich, the advantaged, and the powerful to the exclusion of the disadvantaged, and the weak? How can the Congress, in all fairness, take away the rights of the states to regulate it on surface transportation when no great emergency exists. Section 211 eliminates all state regulations, except as to safety, of the transportation giants such as UPS and Federal Express.

Our final comment. Earlier in my statement, I indicated that deregulation of the large carriers enable them to reject freight they feel is not in their best interest, to the harm of shippers. I can document one case where UPS refused freight and it took an order of the Interstate Commerce Commission to make UPS accept same. Maybe this is the reason UPS is working so hard for the enactment of Section 211 which would permit UPS to refuse unwanted freight which, under the order, they must accept.

Please do not run the smaller intrastate truckers out of business by the enactment of Section 211. We were there during WWII to transport the necessary war materials. We are there to service our states in any emergency. For the sake of an effective transportation system, for the good of our economy and in all equity and fairness defeat proposed Section 211 to the Federal Aviation Act of 1993.

This concludes my statement. I will be happy to answer any questions the committee may have.

I. INTRODUCTION

Good morning Mr. Chairman. I am C. Thomas Clowe, Jr., Chairman, President and Chief Executive Officer of Central Freight Lines, Inc., part of the Regional Carrier Group of Roadway Services, Inc. I appreciate the opportunity to appear here today to share the views of Central Freight Lines, Inc., its parent Roadway Services, Inc. and Roadway Services other motor carrier subsidiaries.

Central Freight Lines, Inc. (Central) has the most intrastate operating authority of any motor carrier in Texas, one of the nation's most regulated states, and over 50 percent of the Texas less-than-truckload market. In the last four years, Central has become a regional interstate motor carrier. By the end of this year, we will be operating 88 terminals and three hubs in eleven states. We plan to expand into three additional states next year. Central also serves Canada and Mexico, in partnership with other Roadway Services carriers.

Roadway Services, Inc., Central's parent company, is a holding company consisting of a number of motor carrier subsidiaries, including Roadway Express, Inc., one of the nation's largest long-haul common carriers of general freight. Roadway Express serves all the United States, as well as Canada and Mexico, through a network of over 600 terminals.

In addition to Roadway Express, Roadway Services operates: Roadway Package System, Inc., which provides small package transportation services; Roadway Global Air, Inc., a worldwide air cargo carrier; Roadway Logistics Systems, Inc., which designs, implements and manages customized logistics systems; Roberts Express Inc., which provides expedited delivery services for time-sensitive shipments; and, in addition to Central, the following other regional carriers: Coles Express, Inc., Spartan Express, Inc., and Viking Freight System, Inc.

I come here today with 37 years of trucking industry experience, all of which has been in the regulated segment of our industry. I have owned my own company, and I have managed operations for publicly held corporations. In 1987, I became the Director of the Transportation Division of the Railroad Commission of Texas, where I implemented the far-reaching changes to Texas' system of motor transportation regulation that resulted from the 1987 Texas Motor Carrier Act. From 1988 to 1990, I served as the Railroad Commission's first Executive Director, where I had oversight responsibility for all regulatory divisions and as well as for administrative services. I have also been the chairman of the National Tank Truck Carriers conferences of the American Trucking Associations and the Texas Motor Transport Association.

II. REGULATORY CHANGES ARE NEEDED

As evidenced by the inclusion of Section 211 in the Senate version of the Airport Improvement Program Act (Airport Bill), which would effectively eliminate state regulation of motor carriage, the House of Representatives' vote to eliminate funding of the Interstate Commerce Commission (ICC), and the recent introduction of the "Trucking Industry Regulatory Reform Act of 1994" by Senators Exon and Packwood, it is clear that change is in the air.

Mr. Chairman, I believe strongly in the states' right and interest in governing the conduct of motor carrier operations within their borders. Nonetheless, I support Section 211 of the Airport Bill, which would clearly preempt states from regulating a large portion of the motor carrier business. I do so at considerable risk to Central's extensive Texas intrastate operating authority and its substantial less-than-truckload market. However, like many other

motor carriers throughout this country, one of our sister companies, Roadway Package System (RPS), competes directly and vigorously with UPS, which, in turn, is understandably seeking equity with Federal Express, its major competitor, through the enactment of Section 211. Therefore, if the marketplace is to be truly competitive, we must all be playing by the same rules. Section 211 must be enacted.

However, Mr. Chairman, I also believe that Section 211's passage should be part of a two-step process, with the second vital step being the enactment of regulatory reform at the federal level, to create a streamlined, market-based system that can also serve as a model for the states.

Let me explain. The purpose of Section 211 is to provide an exemption from state regulation for a defined set of motor carriers. It does not address much needed reform at the federal level. It would also presumably still leave some motor carriers subject to state regulation. These shortcomings must be addressed, and the sooner the better.

We believe the opportunity is at hand. As you know, the House voted down the appropriation for the ICC, while the Senate appears headed toward reducing the ICC's funding substantially. Clearly, the ICC's functions must be streamlined to respond both to the substantial reduction in its funding, as well as to the many changes which have occurred in the marketplace. We therefore propose that the motor carrier regulatory functions be streamlined to provide the minimum necessary framework to facilitate an efficient, market-based system for interstate motor transport. We further propose that this new, streamlined federal framework become the national standard, by requiring that any state economic regulation of motor carriers which may continue be compatible with this new federal

standard.

III. THE MOTOR CARRIER INDUSTRY SHOULD BE A MARKET-BASED SYSTEM

When I arrived at Central four years ago, it was a venerable 62 year-old company. It was also a stoic and traditional motor carrier that was old-fashioned in many of the ways it was conducting its business. Today, however, Central is a vibrant and growing company intent on pleasing our people and our customers. We know that our only security in the long run is doing a better job than our many competitors in anticipating and meeting the needs of our customers.

To succeed as carriers today, we have to be creative and have a flexible profile. We must be capable of quickly modifying our operations and services, as well as our prices, in order to respond to the rapidly changing needs of our customers, and the ever-changing face and complexity of the marketplace.

Mr. Chairman, while Central and our sister companies have long been sincere advocates of regulation, that is no longer our position. Today, we recognize that many of the ICC's functions no longer serve a useful purpose and, therefore, should be eliminated or revised to better reflect the needs of carriers and shippers today; not the needs of carriers and shippers in 1935, or even in 1980. Indeed, that is why we have proposed entry and rate freedom in Texas.

IV. RECOMMENDED REGULATORY CHANGES

Toward that end, therefore, I offer the following as the framework for a restructured regulatory system for the nation and for the states:

1. We propose that the requirement to file tariffs with the ICC be eliminated in favor

of a disclosure requirement.

- Do not require carriers to file tariffs with the ICC. However, carriers should be required to make their rates publicly available, by maintaining tariffs at the carrier's principal place of business or another designated location known to the public.
- If requested by the shipper, a carrier should also be required to disclose the relevant rate in writing or electronically to the shipper so that both parties to the transaction can rely on the same rate.
- Require that the rate which is agreed upon be the rate that is actually charged and collected. To this extent, therefore, while we support the elimination of tariff filings, and the expense and bureaucracy that goes with them, our proposal would not eliminate the so-called "filed rate doctrine," requiring carriers to collect the rate which the shipper is quoted. Our purpose here is to eliminate once and for all the regulatory obligations which gave rise to the undercharge problem, while preserving the protection which the consumer deserves.
- Give carriers authority to set and quickly change rates based on market conditions.
- Maintain the ICC's oversight and responsibilities to review any rate that is challenged as unreasonable, discriminatory, or otherwise unlawful. Under a more liberalized rating structure, the need for the Commission's continued involvement is even greater to ensure consistency in both the analysis of rate

issues and the determination of their lawfulness than was the case prior to the MCA's enactment. Indeed, the recent experiences involving undercharges have dramatically shown that, absent the conferral of primary jurisdiction in a single agency charged with the overall well-being of the motor carrier system (which includes shippers' interests), determinations of rate lawfulness would end up being made purely *ad hoc* by individual federal and state courts, without full understanding of, and in many cases concern for, the impact which any single decision could ultimately have on competition or the continued financial stability of the motor carrier system.

- Eliminate the present antitrust immunity for general rate increases, while continuing immunity for carriers to interline shipments and establish joint rates, and for the collective establishment of commodity classifications, uniform mileage standards, and standardized bills of lading. Such matters provide a common nomenclature and a uniform base upon which shippers and carriers can voluntarily rely, without conferring a competitive advantage to those participating in their establishment.

2. Provide a free market in transportation.

   - Eliminate the "public convenience and necessity" standard for market entry.
   - Base entry solely on an applicant's fitness to comply with the DOT's motor carrier safety regulations and applicable ICC requirements, by requiring all new carriers to demonstrate not only their awareness of the DOT and applicable ICC regulations, but also the existence and details of the applicant's

program to comply, as conditions of operating.

3. Make this new market-based, streamlined system the national standard.

   - Recognize a legitimate state interest in motor carrier oversight by permitting those states that wish to regulate intrastate commerce to continue doing so, but require that their laws be compatible with the new federal scheme, including the new open entry for those who are fit, and the new rate freedoms. Mr. Chairman, in light of the exemption of many but not all state motor carrier operations which would result from the passage of Section 211 of the Airport Bill, we believe this recommendation to be a particularly important one; not only to recognize the states' interest, but also to preserve a level playing field for all competitors in intrastate markets. The Staggers Act, governing rail regulations, as well as the Hazardous Materials Transportation Act (as amended by the Hazardous Materials Transportation Uniform Safety Act) contain compatibility provisions which might be utilized with some modification to allow for the implementation of this proposed national standard for an efficient, market-based motor carrier system.

4. Finally, we recommend that Congress preserve those beneficial elements of the ICC's regulations which not only facilitate business, but are fundamental to the conduct of business between carriers and shippers and provide a responsible code of conduct. The following are examples.

   - The rules governing cargo loss and damage claims and liability: they are well-settled as to the extent of a common carrier's liability, the filing and

processing of claims, and the shipper's access to the courts.

- Uniform bills of lading, which contain the terms and conditions of the transportation agreement for common carriage.
- Commodity classifications and standardized mileage guides.
- The rules governing the extension of credit to shippers by common carriers.
- The rules governing driver leasing.
- The prohibitions against discriminatory and anti-competitive practices, such as the giving or receiving of rebates and concessions.

V. THE ICC SHOULD NOT BE ABOLISHED AND ITS RESPONSIBILITIES SHOULD NOT BE TRANSFERRED

Having toiled in the trenches of federal and state economic regulations for the past 37 years, you should forgive me, Mr. Chairman, if I do not believe that there is any such thing as "DEREGULATION." Quite the contrary. Every business is governed by rules, and somebody sets them. So it is not simply the case that the rules will go away if the ICC does.

The issue is not regulation. The issue is jurisdiction. Therefore, while the purpose of this hearing is directed at the preemption of state motor carrier regulations, I wanted to take a moment to explain our concerns about the attempt being made in the House of Representatives to shut the ICC down and transfer its functions to DOT or another federal agency.

Our nation's economic policy and implementing decisions need to be decided with consistency and a reasonable degree of predictability, based on the merits of the substantive issue involved with regard not only to the carrier and shipper directly involved but also with

respect to the impact on carriers and shippers generally. Our ability as carriers, and that of our shippers, to plan our future growth, particularly with respect to our long-term capital investments, is directly dependent on our ability to predict with confidence and relative accuracy what the rules and outcome of the game will be. While a "free market" may be the best way to foster competition between individual carriers, there nonetheless needs to be a minimum set of rules to govern the responsible conduct of our businesses. A "free market" should not mean a "free-for-all," where the large carriers and shippers can take advantage of the small. To those who would point to states in which so-called "total deregulation" has occurred and who would say that my fears are unfounded, do not ignore the effect and influence which the ICC's standards of conduct have had on the conduct of business by carriers in those states.

Economic issues involve a host of disparate and competing interests: carriers competing within the same mode; carriers within competing modes; carrier employees and other workers; large shippers, including the federal government; small shippers; individual consumers; state governments. Economic issues also involve private disputes between individual entities. The successful adjudication and fair resolution of these disparate interests and private disputes requires not only specialized transportation expertise, but demands impartiality. Should we expect anything less?

If Congress intends for our common carrier system to remain viable and continue growing, our rules in the future need to be set by a single, impartial agency that knows about and understands the transportation business and its complexities. Neither carriers nor shippers can afford to have the legality of rates, the terms of payment and credit, the extent

of liability for cargo damage, and so on, depend upon which state we happen to be in at the particular time, or which agency happens to be making the determination. In order for my company to be successful in its business, we have to know that whatever we say in Texas means the same thing in California and Illinois, and vice versa.

Throughout its long existence, the ICC has played a crucial role, not only in its regulation of individual motor carrier operations, but also in helping to develop and shape our nation's motor carrier system. While the ICC has had its critics over the years, including myself, we do not believe that anyone in this room today can honestly deny that our nation's motor carrier system is the best in the world. Neither can anyone fail to recognize how vital our motor carrier system is to the stability and growth of our economy.

VI. CONCLUSION

Mr. Chairman, we have offered a series of recommendations here today which we feel will significantly streamline the ICC, help reduce our country's deficit, and at the same time, help ensure that the motor carrier industry remains a strong and valuable contributor to our nation's economy and future growth. In that regard, we stand ready and willing to provide Congressional staff with the full details of our proposals.

Mr. Chairman, I graciously thank you for the opportunity to appear here today.

Before the

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS
SUBCOMMITTEE ON SURFACE TRANSPORTATION

JULY 20, 1994
WASHINGTON, D.C.

Statement of the

AMERICAN TRUCKING ASSOCIATIONS, INC.

Legislation to Preempt State Motor Carrier Regulations Pertaining to Rates, Routes and Services

THOMAS J. DONOHUE
President & Chief Executive Officer

INTRODUCTION

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations. I welcome the opportunity to present ATA's views on the several issues being considered by the Committee at these hearings.

The American Trucking Associations ("ATA") is the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, eleven affiliated national organizations and more than 4000 individual motor carrier members, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt; large and small.

On behalf of ATA and its diverse membership, I will address three issues.

First, the need to amend the federal-preemption language of Section 211 of S.1491, the Federal Aviation Administration Authorization Act, which was passed by the Senate last month and is now in conference as H.R. 2739. The scope of Section 211's preemption from state regulation should be expanded so as to create a truly level playing field; one group of carriers should not be given a competitive advantage over another merely because of the way the company is structured.

At the same time, the preemption language should be limited to enable the states to continue to regulate non-rate or economic entry factors of the intrastate trucking industry.

Second, the House of Representatives recently voted to terminate the funding of the Interstate Commerce Commission. It is extremely important to both carriers and shippers to maintain funding for the Interstate Commerce Commission. Regardless of whether you consider yourself a "regulator" or a "deregulator," the concept of eliminating the funding for a federal agency while maintaining the laws and regulations that the agency is delegated to enforce is as senseless as turning off the engines of an airplane while it is still flying, and the results would be just as disastrous.

Third, in response to the elimination of funding for the Interstate Commerce Commission, Senators Exon and Packwood, introduced S.2275 "Trucking Industry Regulatory Reform Act of 1994." S.2275 provides the foundation for meaningful regulatory reform. Specifically:

- Further study of the future of ICC regulation and the ICC is an excellent idea.
- Codifying the ICC's existing emphasis on safety and insurance rather than economic need as the criteria for entry control is long overdue.
- Reduction in the cost to carriers and the government of the tariff filing function is an admirable goal if the important benefits of the "filed rate doctrine" are maintained.
- While ATA supports the elimination of unnecessary regulation, the proposed general exemption power for the ICC is too broad. If this power is granted to the ICC, it must be restricted so as not to frustrate the goals of Congress or eliminate the uniform standards and rules that are essential to an efficient interstate trucking industry.

I. PREEMPTION OF STATE REGULATION MUST RESULT IN AN EVEN PLAYING FIELD FOR ALL CARRIERS.

At its June meeting, the ATA Executive Committee made a significant change in its policy with respect to the federal preemption of state economic regulation of intrastate trucking. In large part, this change in policy was due to the actions of the Senate in adopting Section 211 of the Federal Aviation Administration Authorization Act, S.1491. That section would preempt state economic regulation of the intrastate operations of many motor carriers. The ATA Executive Committee voted that while, it preferred that state economic regulation not be preempted, ATA would no longer oppose Federal preemption of state regulation of motor carrier rates and entry based on economic factors, as long as Congress:

1. Preserves the ability of states to maintain beneficial regulatory protections such as: uniform liability rules; antitrust immunity for interlining, classification and mileage guides; financial fitness of motor carriers (including insurance requirements and self-insurance authorization); and uniform operating practices (such as uniform bills of lading, credit rules, independent contractor leasing rules and regulations). This will ensure stable, qualified and safe transportation to the general public.

2. Preserves the existing state tax exemptions and similar benefits that licensed and certificated carriers enjoy by allowing states to continue to issue certificates or permits or take other steps that enable the state to identify carriers that meet non-economic requirements.

3. Assures the right of carriers to tax write-offs of the reduction in value of state economic operating authorities caused by the Federal statutory change, either as provided for under current law or with new legislation, if necessary.

4. Provides a level playing field by giving the broadest interpretation of eligibility of who qualifies as a deregulated carrier, and enacts any further federal legislation necessary to allow all motor carriers (other than household goods carriers) to enjoy the same benefits and rights in intrastate commerce.

5. Allows continuation of state regulation of the intrastate transportation of household goods.

There are two important aspects of this new policy which I cannot emphasize enough.

o First, is the need for an even playing field. The legislation should not give any carrier or group of carriers

an economic advantage over another carrier or group of carriers. If the law does create a disparity in treatment of carriers, then ATA urges this Committee to consider the immediate enactment of further legislation to expand the benefits of section to all carriers.

o Second, the federal preemption of state regulation of intrastate trucking should be limited to the areas of rates and entry based on economic factors. Areas involving safety, insurance, and the need for many uniform operating practices should be left to the states.

Based on this new policy, ATA asks those members of this Committee who will be on the Senate/House Conference Committee to consider these factors and to make revisions in Section 211 that will protect these non-economic aspects of state regulation and ensure that the benefits and rights being given some carriers are enjoyed by all carriers.

II. ICC FUNDING.

In what appears to be an unprecedented action, the House of Representatives last month voted to eliminate the funding for the Interstate Commerce Commission as of October 1, 1994, while leaving intact all of the legal obligations the Interstate Commerce Act imposes on transportation carriers, the ICC, and others. In our research, we have been unable to discover any

other instance in which the funding for an agency has been terminated by Congress without its first reviewing and if necessary revising the substantive law for which the agency was responsible, or transferring the functions of the agency to another federal agency. This Committee recognized this point in 1978 when it transferred or eliminated the functions of the CAB prior to the sunsetting of that agency.

ATA urges Congress not to terminate ICC funding, but to provide the Commission with sufficient funds to perform its remaining functions. I have attached to this testimony a list of examples of what would happen if Congress were to eliminate the funding of the ICC without either revising the Interstate Commerce Act or transferring the ICC's authority to another federal agency. Here are a few of the highlights from that list:

o **There would be no consumer complaint mechanism for household goods consumers.** The ICC has adopted extensive rules and mechanisms for protecting consumers on household goods shipments. With the elimination of the ICC, consumers would lose these important protections.

o **There would be an unprecedented insurance crisis in the trucking industry.** Federal law and regulations: (1) require ICC regulated carriers to have their insurance on file with the ICC; (2) require insurance companies to notify the ICC prior to any cancellation of a carrier's insurance; and (3) provide for motor carriers to self-insure, if they meet specific conditions and obtain the ICC's approval. All these functions rely on the existence of the ICC.

o **The U.S. would not be able to implement NAFTA.** Mexican carriers would continue to be excluded from the United States in violation of the NAFTA provisions. The Mexican carriers would not be able to operate in the United States since they would not be able to obtain ICC operating authority or file their rates or

insurance as required by the Interstate Commerce Act -- requirements that would remain in effect even in the absence of funding to administer them.

o **All carrier tariffs would be frozen.** All rates, classifications, tariff rules, mileage guides, etc. would be frozen as they exist on the day the ICC closes its doors. The Interstate Commerce Act requires common carriers to file their tariffs (including the Classification) with the ICC. Revisions to existing tariffs must also be filed. If there is no ICC, there would be no agency to receive the tariffs even if the carriers attempted to file them.

o **There would be no enforcement of lumping prohibition.** In 1980, Congress enacted laws that prohibit a shipper or receiver of property from using duress to force a driver to load or unload a vehicle, or to hire a third party (a lumper) to do so at the carrier's expense. The responsibility for enforcing these prohibitions was delegated to the ICC. The illegal lumper problem continues to be a major concern for the trucking industry. If the ICC were eliminated, there would be no enforcement of the lumping rules.

If, however, Congress believes there is a need to reduce the budget of the ICC at this time, it should be done without reducing the agency's ability to perform its essential functions.

o As indicated in a recent GAO report, a significant saving will be accomplished by going to a "safety fitness" criterion, instead of a public need criterion for licensing.

o The ICC's budget could be further reduced through elimination of positions in offices that deal with the Commission's internal matters rather than the regulation of the industry.

o Further savings could be accomplished if this Committee were able to devise a method of reducing the tariff filing requirements while retaining the essential benefits of the "filed rate doctrine."

III. "TRUCKING INDUSTRY REGULATORY REFORM ACT OF 1994" PROVIDES A STARTING POINT FOR REGULATORY REFORM.

S.2275, the "Trucking Industry Regulatory Reform Act of 1994," as proposed by Chairman Exon and Senator Packwood, provides the foundation for meaningful regulatory reform. ATA would urge this Committee to consider the enactment of reform legislation, which would result in millions of dollars in savings for the government and private industry, in lieu of the elimination of funding for the agency. Specifically:

o Study. ATA supports the idea of further studies both as to the future of ICC regulation and of the ICC. What aspects of regulation are essential to an efficient and profitable trucking industry? Should the agency continue as it is, be merged with the Federal Maritime Commission, or have its functions transferred to some other federal agency, such as DOT?

o Entry. ATA strongly supports the proposed entry reform provision of Section 7 of S.2275. Safety fitness and financial responsibility have been the key factors at the ICC for determining entry for at least the last decade. Recognition of this emphasis on safety, rather than public need as the basis for entry, is a reform that has been needed for many years. But highway safety is important, no matter what the truck

is carrying or who is operating it. Congress should expand the scope of these requirements to apply to all trucking operations, not just those currently regulated by the ICC.

o Tariff Filing. The debate on whether or not tariff filing should be continued -- in what form and for whom -- is one of the most controversial issues facing the trucking industry today. In fact, ATA currently has a policy which supports the continuation of ICC tariff filings and other provisions of the "filed rate doctrine," such as antitrust immunity and public notice of rates. ATA continues to support these provisions because they help avoid unnecessary litigation and provide for an orderly, integrated, nationwide trucking industry. However, if Congress can find a way to eliminate ICC and carrier costs associated with tariff filings while keeping the important benefits of the "filed rate doctrine," ATA would support such a provision.

o Exemption power. The one part of S.2275 with which ATA has the most serious reservation is the broad exemption provision the legislation proposes to grant the ICC. ATA supports the concept of allowing the ICC, or any federal agency, to eliminate needless

regulation, but the proposed provision is written too broadly, without necessary restraints on the Commission's authority. This broad exemption power could be used to frustrate the intent of Congress and to eliminate various aspects of federal regulation which are essential to the efficient operation of an integrated, national trucking industry. The ICC exemption provision should therefore be written to expressly exclude the exemption of matters such as:

- The provisions of the Negotiated Rates Act of 1993, the remedy to the undercharge crisis, which took so many years to be enacted.

- The safety and fitness licensing provisions of S.2275.

- Existing insurance provisions: Federal law requires all for-hire motor carriers to maintain certain levels of public liability insurance. ICC-licensed carriers must keep evidence of this insurance on file with the agency. This requirement ensures that the public is adequately protected in the event of an accident. In addition, the ICC has granted over 40 carriers the right to self-insure in order to meet these federal requirements. These carriers save hundreds of thousands of dollars a year in that way. The status of these carriers as self-insurers is based in part on the ICC's ability to police them to make sure they remain financially sound and continue to operate safely.

- Uniform rules with respect to bills of lading; claims rules; cargo liability; credit rules; statute of limitations on claims and collections; and contract rules.

- Continued ICC jurisdiction over carrier mergers and acquisitions; rules governing the operation of freight brokers; owner-operator/carrier leasing regulations; and

enforcement of the prohibitions on lumping abuses.

o Antitrust immunity for the motor freight classification, mileage guide, inter-line rates, and agency agreements.

These are aspects of ICC regulation which everyone in the trucking industry agrees need to be retained.

An efficient and economical interstate trucking industry requires that certain uniform practices, rules and other requirements be maintained on a national level. The trucking industry will not be able to operate in the efficient and economical manner that U.S. industry and consumers have become accustomed to if it is subject to a myriad of inconsistent state and local laws and regulations. Unlike the retailer or manufacturer who may operate facilities in several states, the facilities and personnel of an interstate trucker are not stationary, but are by their nature mobile and provide service in many different jurisdictions.

A single shipment may begin in one state and pass through several other states on the way to its destination. The shipper and receiver of the goods may be located in different states. Without uniform federal laws and regulations governing the provision of such services, the potential conflicts and confusion between and among state laws is beyond comprehension. Therefore, it is essential to the interstate trucking industry and to the users of its services that an agency such as the ICC exist with the exclusive jurisdiction to set the rules and

regulations by which these carriers operate in interstate commerce.

SUMMARY

o ATA encourages the House-Senate Conference Committee to revise Section 211 of the Airport Improvement Act to create a level playing field on rates and entry, but allow the states to continue to regulate other non-economic aspects of intrastate trucking.

o ATA supports the continued funding of the Interstate Commerce Commission, to enable the agency to continue those functions that are essential to the efficient and orderly operation of the interstate motor carrier industry.

o If ICC funding is to be reduced, it should be done in areas that will not jeopardize the functioning of the agency.

o The "Trucking Industry Regulatory Reform Act of 1994" is a solid foundation on which to consider further regulatory reform. ATA supports the need for further study of ICC regulation and the ICC itself. The licensing provisions basing entry on safety factors are long overdue and should be expanded to cover all carriers. Reduction

in the cost of tariff filing for carriers and the government is an admirable goal, provided that the important benefits of the filed rate doctrine can be retained.

o Due to the interstate nature of the industry, uniform rules and regulations are needed in areas such as carrier liability, insurance, and claims. Continued ICC jurisdiction over mergers and acquisitions, and continued antitrust immunity for the freight classification, mileage guide, interlining, and agency agreements, are important to an efficient interstate industry.

Respectfully submitted,

Thomas J. Donohue

WHAT IF THE ICC IS GONE BUT THE LAW ISN'T?

Zeroing out the ICC's budget without any legislative action changing the Interstate Commerce Act could have some disastrous effects. The following are the chaotic highlights:

1. **Frozen Tariffs.** All rates, classifications, tariff rules, mileage guides, etc. would be frozen as they exist on the day the ICC closes its doors. The Interstate Commerce Act requires common carriers to file their tariffs (including the Classification) with the ICC. Revisions to existing tariffs must also be filed. If there is no ICC, there would be no agency to receive the tariffs even if the carriers, bureaus, etc. attempted to file them.

Enforcement. Since there would be no ICC, there would be no one to enforce these rules until a matter reached court. As the "undercharge" crisis showed, a shipper is liable for the rate stated in the tariff. Therefore, if the shipper paid an amount other than that in the tariff on file September 30, 1994, it could be liable for the difference. Similarly, if a carrier raised its rates and attempted to collect the increased amount, a court would only allow a judgement for the tariff amount.

2. **No New Entry Into Industry.** Since a carrier needs an ICC license to operate, there would be no new entry into the

industry. The states would still have the authority to fine anyone operating without an ICC authority.

3. **No Mergers and Acquisitions.** Mergers and acquisitions of all but the smallest carriers could not happen because they must be approved by the ICC.

4. **Self-Insurance Approvals Would Lapse.** No additional carriers would be able to qualify as self-insurers. Further, carriers would not be able to meet the conditions of existing self-insurance approvals (periodic financial and claims reporting), which would then lapse by their own terms. The states would no longer accept a carrier's existing self-insurance approval as evidence of financial responsibility. To exacerbate the problem, when a carrier's self-insurance approval lapses (voluntarily or involuntarily), it would be unable to file evidence of commercial insurance with the ICC. (See next paragraph).

5. **Unprecedented Insurance Crisis.** ICC-licensed motor carriers must have current insurance on file with the ICC. Further, the insurance on file remains in effect until the insurance company has provided the ICC with 30 days notice that the coverage is being terminated. The ICC's closing would thus cause a two-fold crisis for both motor and insurance carriers. First, motor carriers would not be able to file evidence of new

insurance. This would be especially disastrous to a motor carrier that has a notice of cancellation pending at the ICC. Second, an insurance carrier would not be able to notify the ICC of pending termination of coverage. Thus, insurance in effect on September 30, 1994 would remain in effect indefinitely with respect to third parties, even if the trucking company had ceased paying its premiums.

6. **NAFTA Crisis.** Mexican carriers would not be able to take advantage of the NAFTA. They would not be able to operate in the U.S. since they would not be able to obtain ICC operating authority or file their rates or insurance as required by the Act.

7. **Owner-Operator Issues.** It might be necessary for carriers to redefine their relationships with owner-operators. The current control the carriers exercise over their owner-operators without them becoming employees is based largely on provisions of the ICC's leasing rules. It is unclear what would happen to these regulations if the agency were effectively terminated via de-funding.

8. **Brokers' Role Enforcement.** There would be no one to enforce the broker-bonding and other requirements.

9. **No ICC Enforcement of Credit, Claims, and Other Regulations.** Again, it is unclear what would happen to the ICC's regulations, but even if the regulations remained valid, there would be no one to enforce or review them.

10. **Lack of any Enforcement of Lumping Prohibition.** There would be no enforcement of the lumping rules.

11. **No Consumer Complaint Mechanism for Household Goods Consumers.** The ICC's extensive rules and mechanism for protecting consumers with respect to household goods shipments would cease to exist.

THE
NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE

BEFORE THE

SURFACE TRANSPORTATION SUBCOMMITTEE

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

S. 1491, *Federal Aviation Administration Reauthorization Act*

Deregulation of Intrastate Commerce

July 20, 1994

TESTIMONY OF

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

BY

EDWARD M. EMMETT

PRESIDENT

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Mr. Chairman and Members of the Subcommittee, I thank you for this opportunity. I am Edward M. Emmett. I appear today as president of The National Industrial Transportation League, the nation's oldest and largest organization representing shippers of all sizes and products and using all modes of transportation.

The debate over completing the job of economic deregulation of motor carriage on the national and state level has been raging since enactment of the *Motor Carrier Act of 1980*. On June 16th two events occurred that caused the world of transportation to skip a rotation: the U.S. House of Representatives voted to sunset the Interstate Commerce Commission, and the U.S. Senate voted for S. 1491, the *Federal Aviation Administration Reauthorization Act*. These are landmark events in the history of surface transportation regulation.

The votes in Congress reflect a realization that the motor carrier industry has changed since 1980. Trucking is no longer a quasi-utility. Instead, it is now a service industry and neither it nor its customers need or want utility-style regulation. The votes also came from growing frustration with maintaining the costly status quo in an ever changing world. Governments are struggling to find ways to pay for new programs while maintaining activities that many consider to be obsolete.

Regardless of their type or size, shippers and carriers are also faced with tremendous changes and challenges, many arising from ever increasing competition in domestic markets from every corner of the globe. Businesses must be able to transport their products efficiently to be able to compete

globally. How businesses meet these changes and challenges will determine whether or not they survive in the '90s and beyond.

Today, virtually all transportation is interstate or even international. Gone are the days when towns, states, or even nations were self contained economic units. Today our economy is national and becoming ever more global. Our laws and regulations need to change to reflect these changes in the market place. Durable goods are constructed from pieces manufactured all over the country and the world. How can a washing machine, therefore, ever get to be purely intrastate commerce. Go into any grocery store in the country and you will find the same soap flakes and potato chips. These products and commodities travel on roads built with federal taxes. Frito–Lay makes chips in Dallas and it ships those chips around the country. Why should it should it cost more to transport those chips from Dallas to Laredo, TX some 422 miles ($631.00) than it does to Topeka, KA ($484.00) which is farther away.[1] These artificial barriers in any one state add to the cost for all consumers.

The federal government recognized and accepted this fact with all other modes of transportation: airlines, railroads, barges, and passenger buses. In each of these, the federal government found that transportation was interstate commerce and that state regulations were inconsistent with the Commerce Clause of the Constitution. Why is trucking treated differently?

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[1]Bill Mintz, "Big Wigs to Focus on Big Rigs," *Houston Chronicle*, March 31, 1992, citing Robbi Dietrich, Director of Government Affairs, Frito–Lay.

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The nation's transportation system is like the veins and arteries of the human body. Just like in the body, a blockage anywhere in the circulatory system spells trouble. I am here to tell you that we have several major blockages.

State regulation of trucking costs American business and consumers $5 billion to $12 billion annually. That regulatory choke hold saps the economic vitality of the entire country and undermines our competitiveness in world markets.[2]

Shippers and carriers alike are being stymied in their efforts to reduce inefficiencies created by the varying regulatory regimes of 41 states. These regimes are premised on the mistaken notion that they protect shippers. In reality, however, they protect those carriers too inefficient to compete in a deregulated market; carriers that have grown rich operating under state granted monopolies; and those employed by organizations and public agencies that owe their continued livelihood to economic regulation.

Who is not in favor of economic regulation — shippers, both large and small, which makes it truly ironic that those who favor retention of economic regulation justify their position by stating that it is necessary to protect shippers.

As evidenced by the support for S. 1491, many carriers have joined the chorus calling for an end

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[2]Cassandra Chrones Moore, "Interstate Trucking: Stronghold of the Regulators," *Policy Review*, (Washington: Cato Institute, February 16, 1994), p. 1.

to economic regulation. The states and regulators, however, have not heard these voices. They have heard the voices of those seeking to maintain the status quo or even re-regulate trucking. The U.S. Senate has responded to the call of American business for state preemption. The League urges the House to do so as well.

Keep in mind when we talk about numbers, that the gains from the 1980 reforms have outstripped even the rosiest projections. Whether the savings nationally are $10 billion or $60 billion per year, they are substantial. Most of the gains are attributable to savings in inventory costs and other innovations made possible by a more efficient transportation system.

Businesses that flourish in the 1990s and into the 21st Century will be those that relentlessly pursue improvements in how they handle logistics, transportation, and distribution. Government needs to get out of the way and let these businesses--shippers and carriers--pursue the changes needed to survive. Please remember a basic fact of transportation history. Modes of transportation exist only to serve customers, not the other way around. A freight system which does not meet the shippers' needs is worthless. In the market place, such systems go out of existence. However, in the case of intrastate trucking, governments have intervened to maintain something which cannot stand on its own merit, thereby interfering in the progress of business.

In today's deregulated interstate environment, shippers and carriers are meeting these changes and challenges with a new sense of partnership. Gone are the days of heavy regulation when carriers, operating with government granted monopolies and guaranteed profits, abused shippers. Gone

too are the days of the early 1980s when shippers beat–up or "got even" with the newly deregulated carriers. Today, shippers and carriers are working in partnership to move goods from point A to point B safely, accurately, appropriately, and economically.

Some will argue that all shippers want is the lowest price. While price is important, it is not the only thing business cares about. If price was the most important thing, we would be all be driving Yugos. Price is not the answer; getting the safest, most efficient service is the answer. State regulation and the remaining federal regulations continue to place artificial barriers in the way of additional efficiencies.

Looking back, the history of transportation is a virtual kaleidoscope of methods for carrying people and products. Horse–drawn carriages, canals, railroads, airplanes, wagon trains, clipper ships, dirigibles, pipelines, automobiles, steamboats, cattle drives, barges, the pony express, and trucks have all had moments of glory. Some of the modes have passed into history forever, replaced by efficiency or stymied by obstacles or limitations. The history of any one particular mode will reveal records of jobs created and jobs lost; whole towns that flourished for a time only to wither away.

Change has always been a part of transportation. We cannot hold the clock back on this change. If that were possible, borax might still be moved by 20 mule team instead of freight trains. The market needs to be able to adapt and change.

For these reasons, the League has long pursued the elimination of state regulation of interstate commerce. We are here today in support S. 1491 as passed by the Senate as a **minimum** effort to remove the shackles of interference on American business. We urge the members of this Subcommittee and the House to broaden the deregulatory language to include **all** interstate carriers and **all** private fleet operators.

Short of this action, the playing field for carriers will continue to be uneven as a result of actions taken in two of our largest states: California and Texas which have already deregulated UPS and FedEx. For shippers, if the House fails to agree with the Senate, American businesses will still have to jump through state regulatory hoops to transport their products across the nation to American consumers. And the consumers will pay the price.

Allow me to take a moment to discuss two arguments used by those who oppose this legislation: safety and service to small communities. Both of these arguments were considered by the Congress when deregulating the other modes of transportation and dismissed as being incorrect.

The most often stated argument for economic regulation is that it maintains safety. Or, in other words, without economic regulation, carriers will "reduce wages, operate older vehicles, cut maintenance, and force drivers to extend their working hours."[3] This is just not true. In November of 1987, the California PUC and the California Highway Patrol issued a joint

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[3]Colorado Department of Regulatory Agencies, Policy and Research Section, *Deregulation and the Colorado Motor Freight Industry* (Denver: Colorado Department of Regulatory Agencies, June 1991), p. 9.

legislative report on truck safety. The study team concluded: "We have been unable to prove the hypothesis that CPUC economic regulation of trucking is significantly and positively linked to improved highway safety...Other, more direct actions (for example those that improve driver quality, improve road conditions, reduce congestion and remove unsafe equipment from service) appear to have far more potential for improving highway safety."[4]

Nationally, since the removal of most federal economic regulations, the number of carriers has dramatically increased. Correspondingly, the number of miles traveled have increased. Yet the number of fatal accidents per mile driven have decreased according to the U.S. Department of Transportation.

Economic deregulation may in fact lead to increased safety. Association of American Railroads President Ed Harper, recently told the Senate Surface Transportation Subcommittee that economic investment made possible by deregulation has made the nation's railroads safer.[5]

Enforcement and inspection of true safety regulations — not prescribing routes, limiting entry, and specifying rates — will make our highways safer.

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[4]California Public Utilities commission and California Highway Patrol, *Joint Legislative Report: Final Report on Truck Safety*, AB 1678 (Sacramento: CPUC, November 1987), pp. 3–4. The staff noted that the report had not been formally considered by the PUC.

[5]Stephanie Nall, "Deregulation Led to Rise in Safety For Railroads, AAR Chief Says," *Journal of Commerce*, June 16, 1994.

The defenders of state regulation also claim that deregulation will bring about rising rates and declining service, particularly for rural communities and small shippers. Arizona is one of the most rural states in the nation, and a state that until 1982 maintained one of the strictest regulatory regimes imagined in which competition was specifically prohibited.[6] But, in 1982, Arizona voters approved deregulation by a two–to–one margin.

A study by the Arizona Department of Transportation in 1984 found that, "service remain[ed] steady or improved to practically all shipper/receivers, and rate differences do not appear to be significant nor out of line with cost variations...A majority of shipper/receivers favor continued deregulation."[7] The study goes on to state that, "deregulation has not meant radically higher rates for rural areas and small communities. On the contrary, ... shipper/receivers in these areas have benefitted."[8]

Again, looking at the picture nationally, since enactment of the MCA '80, there have been few if any complaints about lack of service or unreasonable rate cases filed at the ICC. The reason is simple, if you remove barriers to entry and allow competition, the trucking industry will provide service.

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[6]Arizona Department of Transportation, Transportation Planning Division, *Legal Foundations of Arizona's "Regulated Monopoly" Concept as Applied to Intrastate Transportation*, (Phoenix: Arizona Department of Transportation, January 1979), pp. 4–6.

[7]Roger D. Blair et al., "Motor Carrier Deregulation: The Florida Experiment," Review of Economics and Statistics, February 1986, p. 129. Emphasis in original.

[8]Ibid., p. x.

The League strongly endorses complete economic deregulation of the motor carrier industry. The motor carrier–related regulatory duties of the ICC and the states are beyond unnecessary, they are now counterproductive. We enthusiastically endorse the intent and scope of S. 2275, the *Trucking Industry Regulatory Reform Act* and S. 1491, the *Federal Aviation Administration Reauthorization Act*.

It is time to finish the job of economic deregulation of the motor carrier industry — end the filed rate doctrine; end obsolete ICC regulations and restrictions; and extend the benefits of deregulation to all aspects of the trucking industry.

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BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

HEARING ON

TRUCKING REGULATION

JULY 20, 1994

TESTIMONY OF THE

REGULAR COMMON CARRIER CONFERENCE

AND

NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

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Dated: July 19, 1994

Chairman Rahall and members of this subcommittee, we appreciate this opportunity to file these comments on behalf of the 7,000 motor carrier members of the Regular Common Carrier Conference and National Motor Freight Traffic Association. Our nonprofit trade associations specialize in serving the needs of these less-than-truckload motor carriers that operate in intrastate and interstate commerce throughout the United States.

Our carrier members share your concerns with reducing the federal budget deficit and with ensuring that taxpayer money -- paid in part by the trucking industry -- is spent wisely.

We can sense and appreciate your frustration in seeking to meaningfully reform federal and state laws regulating truck transportation. This frustration reached record heights last month when this House eliminated all funding for the ICC -- but retained the Interstate Commerce Act -- and the Senate voted to preempt virtually all state regulation of the nation's largest trucking companies through an unrelated aviation bill, S. 1491, without any public hearing or review by its transportation committee. Consequently, the Senate and House actions are working at cross-purposes. The Senate is relying on the federal government to oversee truck transportation within and between the states, while this House has eliminated funding for the federal regulatory agency -- the ICC -- empowered to overview our industry.

This Committee needs to put reason back into the legislative process. Reforms in trucking regulation should be made on the

merits through substantive changes in the law for both interstate and intrastate trucking. Eliminating trucking regulation through the budgeting process or by enlarging the preemption associated with federally certificated air carriers will only result in unsound public policy.

Therefore, the critical question is this: How does Congress thoughtfully make comprehensive and uniform reforms for interstate and intrastate trucking?

We believe there first needs to be agreement on the basic principles that should govern legislative reform. These principles include:

- **There must be fair and equal treatment of all motor carriers.** Section 211 of the aviation bill, S. 1491, gives preferential treatment to the larger transportation companies and, therefore, should not be adopted. The reforms must include an effective means of combatting preference and discrimination in motor carrier pricing.

- **Federal and state regulatory programs must be compatible.** The federal and state governments should act as partners, not adversaries, in administering the same body of law. Once again, Section 211 of the aviation bill violates this principle.

- **The legislation must be appropriate to perform its intended function.** Section 211 would force trucking deregulation into the incompatible context of the Federal Aviation Authorization Act.

- **The legislation must provide a consistent and unified approach to governmental oversight of motor carrier transportation.** Section 211 and the House action defunding the ICC are piecemeal and contradictory "fixes" aimed at specific isolated objectives.

- **An objective analysis on trucking reforms should be performed, based on the facts with equal consideration given to the needs of transportation providers and users.** Section 211 never received public scrutiny and input in the Senate.

- **Last, but not least, there must be an orderly transition as regulatory change is made.** Congress must provide sufficient lead time for carriers, their customers, and the states to alter their business arrangements or laws. Section 211 would preempt tomorrow the laws in 42 states.

With these basic principles as a foundation for a fair and effective approach, we recommend that:

Congress should empower the Transportation Research Board within the National Academy of Sciences to perform an objective, independent, cost/benefit analysis of Section 211 and federal trucking regulations and to report back to Congress within eighteen (18) months with recommendations for legislative changes. Congress should postpone the effective date of Section 211 for twenty-four (24) months to allow it to enact legislative changes based on the TRB study.

Congress has frequently relied on TRB to provide substantive analyses of and recommendations on the trucking industry. It is an objective, professional research agency. This provides a sound approach for Congress to enact a deliberate, reasoned policy decision on a national policy for federal and state trucking regulation.

Candidly, we believe that at the end of this hearing, the Committee will not have a reasonable opportunity to sort out the facts from the fiction, the rhetoric from the reality, or the plausible from the practical. You will have received sincere, heated debate on policy and principles, but your options and best course of action will remain undefined. Time is working against careful, legislative reform. The principal proponents of this legislation, UPS and Federal Express, have conducted a campaign of numbers without knowledge producing at great expense what they hope is a controlling body of influence. They don't

want a deliberate informed approach because it is dangerous to their special interest bill.

For these reasons, we strongly urge the Committee and the House Conferees on S. 1491 to postpone the effective date of Section 211 until a TRB study is completed. At a minimum, any change enacted now by Congress should give all parties at least twelve (12) months lead time before any preemption of state regulation becomes effective.

The only other practical alternative to Section 211 that could be or should be adopted by Congress during this session would be legislation that requires any state law regulating trucking to conform to the Motor Carrier Act of 1980 and further require that states certify their regulatory program with the federal government. A similar approach was taken for the passenger carrier industry in the Bus Regulatory Reform Act of 1982. This approach at least ensures equal treatment and fairness to all trucking companies, as well as the needed uniformity in state and federal programs. It would also remove any perceived legitimacy from the claim of UPS that, in comparison with Federal Express, it is unfairly disadvantaged by existing state regulation. It does not, however, preemptively decide on the merits what would be eliminated or be retained. The TRB study proposed could be used, however, to fill that void.

It does not make sense for Congress to enact a law, such as Section 211, that says a state cannot license a motor carrier to ensure safety and insurance fitness, but impose such a

requirement at the federal level. This law would take away from the states a very powerful safety tool -- removal of operating authority as means to insure compliance with safety requirements.

It is not logical to require that interstate motor carriers' rates and services be reasonable and nondiscriminatory, and to establish a regulatory scheme to ensure that those statutorily-mandated duties are met, but preempt in Section 211 the states from making those same requirements for the benefit of their citizens and from enforcing those motor carrier obligations through state regulation.

It also does not make sense and is inequitable for the ICC to regulate mergers, tariffs, credit terms, cargo damage rules, the return to shipper of duplicate and unidentified payments, and so on, and then, in Section 211, to deny to the states the ability to so protect their citizens in fulfilling those same appropriate governmental responsibilities regarding intrastate commerce.

What makes sense is that Congress establish fair and uniform governmental responsibilities to be administered in a coordinated program of state and federal governments. This is the approach Congress has taken in the federal motor carrier safety laws through the Motor Carrier Safety Assistance Program (MCSAP). This partnership has worked well and could be applied here.

Section 211's preemption of "any state law" relating to "rates, routes or services" of the nations' largest trucking companies creates conflicts with a great variety of non-economic

state regulations pertaining to trucking. Absent any demonstrated burden or effect on interstate commerce, it raises the question of whether the preemption would violate the 10th Amendment of the U.S. Constitution, which reserves to the states those powers which are not delegated to the federal government. This preemptive language duplicates that in Sec. 1305 (a)(1) of the Airline Deregulation Act which has cut a wide path through state and local laws designed to protect the consuming public. For example, in 1992 the Supreme Court held that state unfair advertising laws were preempted as to airlines (U.S. Supreme Court in Morales v. TWA, 112 S. Ct., 2031 (1992)) and some federal courts of appeals have held that the preemption extends to tort actions (Hodges v. Delta Airlines, Inc., F. 2d 1075 (5th Cir. 1993)).

Section 211 should not be adopted by the House. It is a special interest law that creates a huge competitive advantage for UPS and FedX. It is bad public policy. That it was adopted by the Senate as a floor amendment to an unrelated aviation funding bill without any public hearing or committee review, illustrates clearly that it is special interest legislation for UPS and FedX. It is grossly unfair to thousands of motor carriers.

The publicized justification for Section 211 is to remove a competitive advantage Federal Express has over UPS created by a decision of the Ninth Circuit Court holding that the State of California cannot regulate the trucking operations of Federal Express. However, the alleged competitive advantage is illusory.

That court decision did not create a competitive imbalance. Federal Express is self described as an all-cargo air carrier which utilizes a few specially designed trucks in a small but integral portion of its airline operation.[1] Federal Express is overwhelmingly an intermodal air-surface carrier, specializing in interstate transportation of small parcels and documents.

By contrast, over 83 percent of UPS' business is exclusively 2 to 3 days ground service, both intrastate and interstate, of heavier weight packages.

In fact, the Ninth Circuit Court noted in its decision that of the 2600 trucks Federal Express operates each day in California, only three trucks involve intrastate transportation. These trucks are used as an available option[2] to transport small packages between Oakland and Los Angeles in accordance with the airline schedule.[3] These small parcels and documents weigh on the average five pounds, are packaged in air cargo containers and occupy the trucks along with other interstate shipments.[4] In contrast, UPS operates several thousand trucks in California. UPS

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[1] Federal Express' Opening Brief in No. 89-16444 before the United States Court of Appeals for the Ninth Circuit. pp.8, 17

[2] Use of this option depends on factors such as aircraft availability, mechanical problems with airplanes, package volume and weather. Id. at 38

[3] Id. at p.38

[4] Id. at p.38

all but overwhelms its competition.[5] This is hardly a competitive disadvantage or a justification to preempt truck transportation laws in 42 states.

It should also be noted that California subsequently changed its laws in 1993 to give UPS almost total freedom from state regulation on the same premise as the so-called Federal Express competitive advantage. What that law has done, as would Section 211, is give UPS a tremendous competitive advantage over thousands of California carriers who are now petitioning California for equal treatment.

Consequently, the question remains, what overriding federal interest justifies the immediate preemption of state trucking laws with the consequent economic devastation of small and medium sized trucking companies and the ultimate destruction of the common carrier system that has served these states well since they were first settled? Congress has historically used its preemption power only when confronted with a compelling demonstration of abuse by the states, warranting federal intrusion.

A close examination of the states' trucking laws indicate that they are continually reviewed and modified by the states. California and Texas -- two of the largest trucking markets -- are good current illustrations. They have enacted significant

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[5] In 1992, UPS had total system revenue of $17.1 billion and profits of $809 million. It is the largest, most profitable transportation company in the world. It is ludicrous to suggest it has any regulatory or other disadvantage.

regulatory reforms recently and more changes are now under consideration. Plainly, it is unfair to characterize the states as intransigent. Indeed, this Committee is aware of their current program aimed at bringing all state regulations into coordination with federal regulation.

We are sure that further reform is certain, particularly to promote uniformity. However, we believe the most reasonable approach would be for TRB to carefully examine this issue and make objective recommendations to Congress. The meat ax approach, taken in Section 211, of preempting all state regulation is unwarranted, unfair and anti-competitive favoring UPS.

Our Associations will earnestly work with Congress in rationally developing changes that embrace the principles discussed above. The RCCC recently suggested to the Senate ways to reduce the federal expense for the ICC by more than $10 million annually while retaining the agency's regulatory functions. Reforms can and should be made for the benefit of all.

Respectfully submitted,

Martin E. Foley James C. Harkins

Before the

UNITED STATES HOUSE OF REPRESENTATIVES
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
SUBCOMMITTEE ON SURFACE TRANSPORTATION

JULY 20, 1994
WASHINGTON, D.C.

Statement of the

AMERICANS FOR SAFE AND COMPETITIVE TRUCKING

F.S. GARRISON
Chairman, President and Chief Executive Officer
American Freightways Corporation

I am F.S. Garrison, Chairman, President & CEO of American Freightways Corporation, a regional and interregional less-than-truckload carrier serving in interstate commerce all points in 14 states located in the Midwestern, Southeastern and Southwestern regions of the United States, and serving in intrastate commerce all points in Arkansas, Kansas and Louisiana. American Freightways is a publicly held company headquartered in Harrison, Arkansas. I am also a member of the steering committee of Americans for Safe and Competitive Trucking (ASCT).

I greatly appreciate the opportunity to offer the views of ASCT and American Freightways before this subcommittee on the economic regulation of an often overlooked but vital component of our national transportation system, intrastate motor carriage.

Americans for Safe and Competitive Trucking is a broad-based coalition of more than 200 large and small companies, trucking firms, package express carriers, shippers, private carriers, brokers, consumer groups and public policy organizations. ASCT supports reform of the motor carrier industry both at the federal and state level in order to increase competition, and thereby productivity and efficiency.

ASCT has been supportive of Rep. Bill Emerson's bill, H.R. 2860, the "Trucking Regulatory Reform Act of 1993." H.R. 2860 would eliminate the filed rate doctrine, streamline ICC licensing requirements and, most importantly, would eliminate burdensome state economic motor carrier regulations for all motor carriers. This proposal not only creates an even playing field for intrastate economic deregulation but also provides most of the reforms included in S. 2275, the "Trucking Regulatory Reform Act of 1994" introduced by Sen. J. James Exon and Sen. Bob Packwood.

ASCT has also been very supportive of the efforts of Rep. Pete Geren, Rep. Bob Clement, Rep. Dennis Hastert, Rep. Ron Packard and other

Congressional leaders that have recognized the waste resulting from economic regulation of intrastate motor carriage.

ASCT supports all efforts that would lead to total economic deregulation for motor carriers. We support the action by the Senate in S. 1491, Section 211, the "Federal Aviation Authorization Act of 1994", that would deregulate intermodal all-cargo air carriers. We believe that Section 211 is a step in the right direction, but we must recognize that we now have a unique opportunity to pass legislation to do away totally with all intrastate economic barriers for all motor carriers, not just those carriers covered by that legislation. We believe truckload and less-than-truckload carriers with no air freight forwarding operations, private carriers, most owner-operators and other small carriers are currently shut out by the Senate bill.

The argument is made that these segments of the trucking industry can become air freight forwarders. The trouble is there are no guarantees this can happen, and, even if it does, it will most surely be at the expense of tremendous amounts of time and dollars attempting to satisfy the requirements of different states while those carriers favored initially by coverage under Section 211 of the Senate bill make off with the freight. Hardly a level playing field for the smaller carriers! Hardly a clear and concise path to an efficient national transportation system!

Having commented about the obvious inequities created by the special legislation of Section 211, I believe it is time to move to a broader perspective. The real issue over deregulation of intrastate traffic is not about whose ox is being gored. It is about extending to all United States citizens a better standard of living versus protecting the status quo for a chosen few. It is about efficiency versus waste. It is about a more productive United States that can successfully compete in the international economy. It is about jobs – good jobs – at home – rather than

abroad. It is about the right of our citizens to start a business. Without freedom of entry that right is denied.

The fight against intrastate deregulation has come from those within the trucking industry who already possess intrastate operating authority and want protection from competition. They say regulation benefits their citizens, assuring service to small towns, protecting small shippers and small carriers. The fact is that under 14 years of interstate deregulation service to small towns and small shippers has been enhanced. As for protection of carriers from competition, I know nothing about the trucking industry that makes it unique and deserving of protection from competition. I could make a better case for a motor carrier to be protected from itself. Certainly many small carriers are succeeding better than their larger counterparts.

Protection creates a safety net, which results in a cost plus pricing scheme, in turn resulting in higher costs to the consuming public as well as industry. For a better standard of living and a better chance to compete successfully in a global economy we have to wipe out the safety net at home, and home includes the states. This can only happen through Federal legislation. The states are just too vulnerable to pressure from the favored few who hold intrastate operating authority.

A good example is the state of Texas, where intrastate shippers are held hostage by a few large intrastate carriers. These carriers, fearful of deregulation and competition, are now saying they will support deregulation for Texas. What they really support is piecemeal deregulation – next year – that would allow freedom of pricing, but not freedom of entry. Where only a few are allowed to operate, freedom of pricing (unaccompanied by freedom of entry) is almost meaningless. If history is any indication it could be decades before Texas removes economic regulation.

It is difficult to comprehend why intrastate traffic deserves different treatment than interstate traffic. We are talking about the same shippers, same products, same communities, same carriers, same trucks, same drivers, and, yes, the same citizens.

I have been in this business 35 years. I operated an interstate and intrastate regulated carrier for 24 years. I sold that business in 1979, partly because of economic regulation and the substantial resources consumed fighting to obtain operating authority with which I could compete. After interstate deregulation occurred I started from scratch a new carrier in 1982, the one I represent here today. I tell you from my own experience, not from theory, that those two operations are as different as day and night. It is a lot more challenging but a lot more fun and rewarding to compete for business as we do today. Sure, I want the chance to compete for more intrastate business. Competition is as American as our American flag itself.

But what I want is not so important. I am not very experienced at getting everything I want. What is important is what is best for the citizens of this country. I think I have the background and knowledge to predict that total economic deregulation of intrastate motor carriage will result in a more efficient national transportation system to the ultimate benefit of the vast majority of our citizens. That is reason enough to be here today and testify in support of Section 211 of Senate Bill No. 1491 and its broadening to include coverage of all motor carriers, large and small, private, common, and contract, express or not.

I appreciate your attention and will be glad to answer your questions.

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Warren E. Hoemann, Vice President of Government Relations for Yellow Corporation, Overland Park, Kansas. Yellow Corporation is the parent company of four motor carriers: Yellow Freight System of Overland Park, Kansas; Preston Trucking of Preston, Maryland; Saia Motor Freight of Houma, Louisiana; and Smalley Transportation of Tampa, Florida. The Yellow corporate family also includes Yellow Logistics Services, a third-party logistics company, and Yellow Technology Services, a provider of information services to the motor carriers.

Each of the motor carriers in the Yellow family operates in both interstate and intrastate commerce, handling general commodities in LTL (less-than-truckload) quantities. Yellow Freight System is a nationwide LTL carrier with over 500 terminals and operating revenues of $2.4 billion. Preston Trucking operates 70 terminals throughout the mid-Atlantic, Northeast and upper Midwest, with annual revenues of $397 million. Saia Motor Freight operates in central and southern states, including Texas, through a system of 28 terminals, with annual revenues of $120 million. Smalley Transportation has 13 terminals in the Southeast and annual revenues of $39 million. These four carriers together hold intrastate operating authorities in 21 states.

Yellow supports Section 211 of S.1491. We urge this Subcommittee to recommend Conference Committee adoption of Section 211. We believe this course of action is necessary for two reasons: First, passage of Section 211 will rectify a current imbalance in the regulatory status of companies engaged in air freight, small parcel and LTL transportation. Second, passage of Section 211 will begin the much-needed process of allowing both shippers and transportation companies to make business decisions based upon marketplace needs and not regulatory requirements. Allow me to comment on each of these, in turn.

Attached to my written statement are three advertisements from transportation companies. First, Federal Express offers to carry the copier and not just the letter. Second, UPS proclaims its advantages for LTL freight. And third, Yellow Freight advertises its own time-definite, guaranteed, expedited freight service. Here, in the companies' own ads, we see how air freight, small parcel and LTL companies today offer competitive services. From a shipper standpoint and from the standpoint of our national economy, that competition is good. From Yellow's standpoint as one of those competitors, we believe competition in the marketplace is how our system should work. But from a public policy standpoint, there is no reason why directly competitive transportation companies should operate under different regulatory regimes. Yet, those different regulatory regimes exist today. That is what Section 211 would rectify.

By virtue of the 1991 Ninth Circuit Court decision, Federal Express is not subject to state regulation of its trucking operations, at least in the nine western states. UPS and Federal Express have been deregulated by legislation in California, by Attorney General opinion in Texas and by legislation in Kentucky. In all those states, the operations of the Yellow family of companies remain regulated, even though, as shown,

many of our service offerings are directly competitive Yellow has no quarrel with Federal Express and UPS advancing their own interests, but the continuation of state regulation over the rates, routes and services of Yellow companies significantly hinders our ability to remain competitive in the rapidly merging air freight/small parcel/LTL market. Yellow supports Section 211, first, then, because our family of companies qualify under its current terms and would remain on a regulatory par with our direct competitors.

While Section 211 would restore competitive equity, it would also begin a much-needed process of regulatory reform by allowing business decisions to be made on the basis of marketplace needs rather than regulatory requirements. Yellow firmly believes that corporate success is best achieved through satisfaction of the customer rather than protection of a position. Intrastate regulation of rates, routes and services, however, gets in the way of satisfying a shipping customer.

Let me give you an example. To meet global competition, many shippers have restructured their own supplier network so that supplies can be delivered in a just-in-time manner. Today, shippers will ask us to compete on freight moving from all their suppliers within, say, a 300-mile radius. Those freight movements can involve both interstate and intrastate shipments, but our customers want all of those movements to be treated alike and under the same rate structure. Even putting aside the availability of intrastate operating authorities (as I have noted, the Yellow companies have such in 21 states), the rate approval mechanisms at the state level create uncertainty and delay that, in turn, create dissatisfied customers. Failure to obtain intrastate operating authority or failure to obtain approval of a proposed rate creates something else entirely -- former customers. A six- to eight-month delay in obtaining intrastate rate approval means we could completely miss the opportunity to compete for *all* of a shipper's business. The loss of customers, and the inability to compete for them in the first instance, is particularly probable when competing transportation companies are under different regulatory regimes, as is the case today. Shippers today have alternatives -- UPS, Fed Ex, other modes -- that do not face intrastate rate approval uncertainties and delays.

Section 211, then, achieves two important public policy goals: 1) It restores equity of competition between transportation companies coming from different regulatory regimes; and 2) It moves business decisions away from mere compliance with regulatory requirements toward satisfying the customer in the marketplace. Ultimately, what is of benefit to the shipping community will be of benefit to the nation's economy, our nation's ability to compete in world markets, and of benefit to the transportation companies. We must not let regulatory policy get in the way of customer service.

Yellow worked hard to be sure that our companies were absolutely included under Section 211. We had to, for the competitive reasons I mentioned. We do not, however, seek competitive advantage from Section 211. Yellow has consistently urged that Section 211 be considered the first step of a two-step process, with broader federal

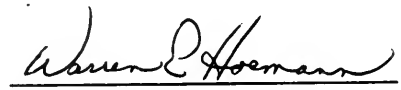
preemption of intrastate rates, routes and services being addressed in separate legislation. Yellow will support such a measure.

Similarly, Yellow looks forward to the day when the non-economic regulatory rules at both the federal and state level are compatible for common carriers. I speak here of rules that govern cargo loss and damage, uniform bills of lading, and the like, which do not grant competitive advantage to any transportation company but work to the general benefit of shippers, carriers and the public by allowing a smooth flow of commerce. Again, Yellow pledges to work with Congress to ensure the compatibility of these non-economic rules in separate legislation.

While Yellow favors broadening the preemption of intrastate regulation of rates, routes and services and while we favor addressing the ancillary non-economic issues, we cannot jeopardize Section 211 to do so. Section 211 addresses the immediate problem of competitive imbalance due to different regulatory regimes. That problem will continue to grow unless Section 211 is passed now. That is why Yellow believes a two-step process is necessary.

Finally, Yellow agrees with Consolidated Freightways that a clear statement of concern from this Subcommittee would be helpful in support of a tax write-off for intrastate operating authorities. In our instance, Yellow has approximately $7.7 million of intrastate operating authorities on our books. Similar treatment, of course, should be accorded all transportation companies affected by Section 211 and subsequent preemptive legislation.

I thank you for the opportunity to comment on Section 211. Yellow urges its passage as currently written.



Warren E. Hoemann
Vice President - Government Relations
July 20, 1994

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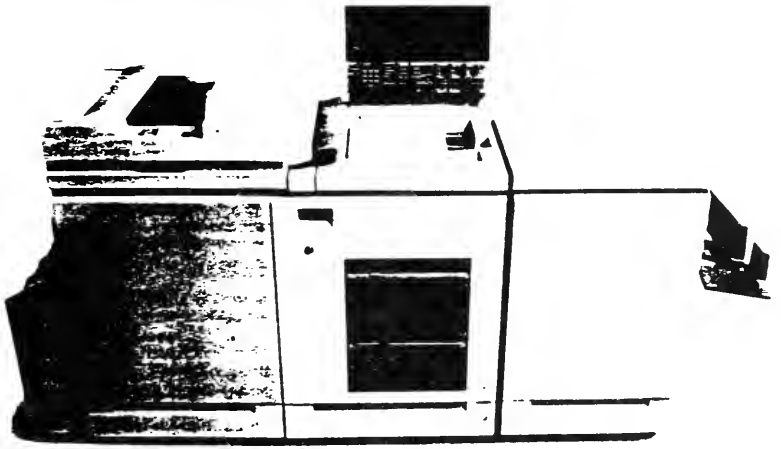

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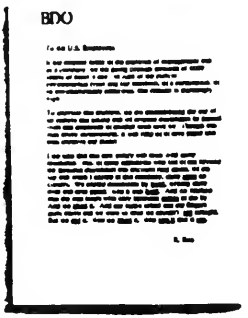

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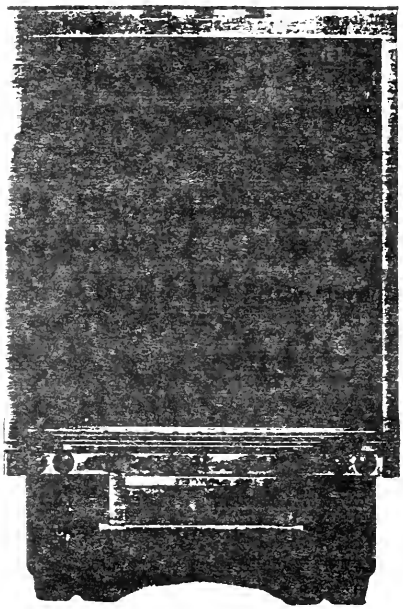

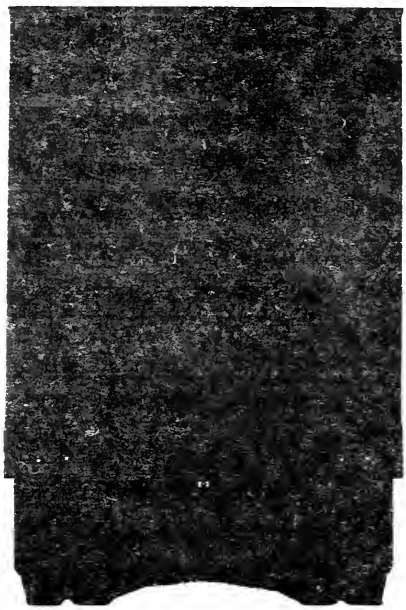

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Yellow's Express Lane Service™ offers 100% guaranteed expedited delivery throughout the continental U.S., as well as most of Canada. With Express Lane Service, you also save days off standard service schedules at rates consistently below air freight. It's another part of Yellow's ongoing commitment to faster transit times. So if you're shipping in today's faster-paced marketplace, look for a carrier that can help you keep up. Think fast. Think Yellow.

TESTIMONY OF

JIM HOPPER, EXECUTIVE DIRECTOR

ASSOCIATED MOTOR CARRIERS OF OKLAHOMA, INC.

P.O. BOX 14620

OKLAHOMA CITY, OKLAHOMA 73113

(405) 843-9488

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON SURFACE TRANSPORTATION

JULY 20, 1994

RE: LEGISLATION TO PREEMPT STATE MOTOR CARRIER REGULATIONS PERTAINING TO RATES, ROUTES AND SERVICES

Mr. Chairman, my name is Jim Hopper and I serve as the Executive Director of the Associated Motor Carriers of Oklahoma, Inc., the trade association for the trucking industry and allied businesses in Oklahoma. Thank you for having these hearings today. I appreciate this opportunity to provide testimony on an issue of vital importance to the vast majority of trucking interests in Oklahoma and elsewhere around the nation.

Our association consists of approximately 400 carrier and allied members and it is on the behalf of those members that I appear today to oppose this movement toward federal preemption of states' rights to regulate intrastate trucking. The trucking industry affects virtually every aspect of our lives. The American Trucking Associations (ATA), the national trucking organization, is fond of saying, "if you've got it, a truck brought it!" This is true for every state in the nation. In my state alone, over 87,161 people, one of every eleven, were employed in the trucking business in 1992. These employees earned more than $2.7 billion in salaries that same year. Oklahoma is home to over 3,520 family-owned and corporate trucking businesses. Similar statistics can be recited for every state in the nation, including your state of West Virginia, where over 47,641 people worked in the trucking business in 1992. I make this point to emphasize the magnitude of this industry to our national economy and the need for a continued regulatory environment that will protect smaller carriers, those who make up the vast majority of the trucking companies in my state and every other state.

Intrastate regulation of the trucking industry has served Oklahoma consumers and shippers well for many years. It creates a stable environment and allows many carriers of various sizes to survive and be profitable. Without the continued right for the state of Oklahoma to regulate intrastate trucking, this stability and the atmosphere that has served the shipping and consuming public so well will be turned upside down and chaos will rule. The federal government should not be involved in telling the state of Oklahoma, or any other regulated state, how to handle their strictly intrastate trucking.

Of course, the state will continue to have jurisdiction over strictly intrastate commerce and have the continuing duty and responsibility to govern intrastate issues concerning highway safety, environmental protection, existence of insurance for the protection of the public impacted by the operation of motor carriers and other items too numerous to mention. In many instances, our economic regulation of trucking is integrated with these other extremely important state duties. For example, our state regulatory commission, in addition to regulating intrastate trucking, also is charged with the duty to regulate safe disposal of the numerous deleterious substances generated by oil and gas operations conducted throughout our state. We have currently in place a comprehensive scheme of regulation which ensures that the disposal facilities in place in our state adequately protect fresh water sources from pollution by these deleterious substances. Inasmuch as the vast preponderance of these disposal fluids are trucked to disposal facilities, we have in place as part of our economic regulatory scheme requirements that haulers of

deleterious substances have access to approved disposal wells prior to commencement and/or broadening of trucking operations. In order to adequately track safe disposal of deleterious substances and again as part of our regulatory scheme, transporters of these substances are required to provide information respecting the number of barrels transported and disposal facilities utilized. Again, this is a comprehensive integrated system which has proven to be extremely effective in preventing the pollution of our state's fresh water sources and which would be utterly destroyed by preempting our state from doing its duty to effectively regulate intrastate trucking.

At the very minimum, this pending legislation should be restricted to the large intermodal all-cargo air carriers as originally proposed. Unfortunately, the pending Senate amendment has been so broadened, it threatens the very existence of smaller carriers in Oklahoma and elsewhere around the nation. Among other things, predatory pricing will become rampant and rural areas and smaller shippers will suffer from a loss of service, because those carriers who have been fit, willing, able, and required to provide service to those areas will not be in business very long.

If you haven't already heard it today, you will hear it argued that "any company dependent on economic regulation for survival won't survive for long". That statement may be true, but why should the federal government preempt these long-standing "states' rights" concerning intrastate trucking regulation just because several of the larger carriers got together and decided they wanted a level playing field. Make it level for them, but leave the rest of the trucking industry alone and don't allow the Senate version to passed unchanged.

Yes, times may be changing. But there ought to be some order to this change, not utter chaos. Preemption of intrastate regulation should not happen without serious thought given to the consequences for thousands of trucking companies, their employees, shippers and customers. The appropriate committees in Congress should be allowed to hold hearings and receive testimony from all segments of the trucking industry, not just the large carriers, before such far-reaching decisions are made.

It is important to note that the ATA does not speak for the vast majority of motor carriers on this issue. Don't abandon the smaller trucking firms who provide service to every nook and cranny of this nation and have made the United States motor carrier industry the finest in the world. They don't deserve that fate. I urge you to preserve the right of states to continue to regulate purely intrastate trucking. If any changes are necessary, limit them to the large intermodal all-cargo air carriers as originally proposed. They can handle it. Be fair to the smaller companies who make up the largest share of the trucking industry.

Thank you again for taking the time to hold these important hearings. I appreciate being given this opportunity to present the other side of this story.

STATEMENT OF
FRANK E. KRUESI
ASSISTANT SECRETARY FOR TRANSPORTATION POLICY
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
HEARING ON
PREEMPTION OF STATE REGULATION
OF INTERMODAL ALL-CARGO AIR CARRIERS
JULY 20, 1994

Good morning, Mr. Chairman and members of the Subcommittee. I am pleased to be here to discuss the problems of State economic regulation of motor carriers, and the proposed legislative solution now before the Committee. Section 211 of S. 1491 would prohibit States from regulating the trucking operations of transportation companies that offer intermodal cargo services. The Administration strongly supports this provision because it will eliminate conflicting laws that interfere with efficient intermodal cargo transportation and let us enjoy at the State level those economic benefits that have accrued at the interstate level since the Motor Carrier Act of 1980.

The Benefits of Trucking Deregulation

Regulation of the interstate trucking industry by the Interstate Commerce Commission (ICC) was largely removed by the Motor Carrier Act of 1980, a fine piece of legislation

crafted by this Committee. As a result of that Act, almost 40,000 new carriers have entered the industry and made rate levels much more competitive. The new entrants include almost 2,000 women- and minority-owned carriers that would probably have been "frozen out" under the old entry controls. According to the Bureau of Labor Statistics, total employment in the trucking services industry has increased by over 500,000 since 1979, even after taking into account job losses resulting from recessions and other economic adjustments.

Shippers' overall distribution costs have been significantly reduced as a result of new price and service options enabled by the Act. The reforms have played a major role in the way U.S. industry conducts its manufacturing, shipping, merchandising, and inventory functions, resulting in substantial reductions in logistics expenditures. Estimates of savings range from $20 billion per year in direct freight costs, to more than double that figure when inventory savings are included.

Moreover, these benefits have occurred without the loss of service to small, rural shippers and communities that was predicted by the opponents of reform. Nor have their predictions of a serious deterioration in truck safety come to pass. Economic regulation does not ensure truck safety. Direct safety regulation does. A joint study by the California Highway Patrol and the California Public Utilities

Commission showed a direct and inverse relationship between truck inspections and truck accidents: as inspections increased, accidents fell and vice versa. Experience shows that since enactment of motor carrier deregulation at the Federal level and several important motor carrier safety laws also developed in this Committee, the fatal accident rate for medium and heavy duty trucks has fallen by about half.

The Problem of State Trucking Regulation

Most of these interstate reforms are not available to interstate or other carriers when they are conducting intrastate trucking operations. Although nine States do not regulate trucking operations conducted wholly within their respective boundaries, 41 States do. Such regulation usually takes the form of entry controls, tariff filing and rate regulation, restrictions on operations, and grants of antitrust immunity for carriers to collectively set their rates. Not all 41 States regulate each of these aspects nor do they all regulate them strictly, but the very diversity of their regulatory schemes is a problem for national and regional carriers who try to conduct a standard way of doing business.

Entry controls at the State level can be very strict, even stricter than they were at the ICC prior to the Motor Carrier Act of 1980. For example, it took United Parcel

Service almost 20 years to acquire authority to conduct operations within the State of Texas. In many States, such as Michigan, entry into any meaningful trucking operation is difficult because incumbent carriers are in the powerful position to argue before State regulators that new carriers are not needed and should not be permitted. To avoid these regulatory roadblocks, most new applicants seek such narrowly-defined authority -- to carry a particular commodity, such as dentures, for example -- that few existing carriers bother to protest. The resulting new operations are so restricted in scope that nothing is added to competition. With few competitors for any given route and type of trucking business, there is little reason for them to compete on price, so rates are higher than they would be if entry were as easy as it is at the interstate level.

About 26 States strictly regulate trucking rates. Such regulation is usually designed to ensure not that rates are kept low, but that they are kept high enough to cover all costs and are not so low as to be "predatory". Other carriers help to enforce rate regulation by complaining to State regulators that a carrier's rates are too low, and many State agencies can order those rates increased. States that regulate rates also require carriers to file their tariffs, an expensive task, with much paperwork and long intervals between filing rates and receiving approval to charge them. For carriers such as UPS and FedEx, which conduct interstate

operations at the national level and have a uniform pricing scheme, this type of regulation and "regulatory lag" is both expensive and disruptive to operations. It also increases costs to consumers who use their services.

Most of the States that regulate rates confer immunity from the antitrust laws on carriers that band together to form "rate bureaus" for the purpose of discussing and agreeing on the rates to charge shippers. It does not take much imagination to guess the effect this has on rates: carriers facing little competition would not normally meet with each other to lower their rates.

Trucking economic regulation at the State level is both important and expensive. As much as two-thirds of all trucking shipments in the U.S. are intrastate. A recent staff study by the Federal Trade Commission estimates that strict entry restrictions in the "less-than-truckload" or LTL sector, which is so important to small businesses, raise rates by about 20 percent. Strict rate regulation in this sector raises them another 5 percent. And antitrust immunity adds another 12 percent increase, for a total of 37 percent in States that regulate entry, rates and collective activity. For the full truckload sector, which is more important to larger businesses, intrastate rates are 32 percent higher than interstate rates.

Taken together, it is estimated that State regulation costs shippers between $3 billion and $8 billion per year. These costs are passed on to consumers. Although much of this cost is borne by consumers and shippers in the regulating States, a significant portion is also paid by the rest of us in other states, as we purchase goods made by regional, national, and multi-national companies located in States that regulate.

Other expenses are not even counted in this cost burden. In order to escape the unnecessarily high costs of using intrastate hauls, shippers often make transportation and plant location decisions that save their companies money, but have undesirable consequences for the economy and the Nation. These costs include unnecessarily long shipping distances. For example, Procter and Gamble supplies its customers in Texas from manufacturing plants located as far away as Tennessee rather than from its Texas plants because relatively low interstate trucking costs make it cheaper to do so. The result is more diesel fuel consumption, more traffic congestion and air pollution, and more wear and tear on the highways.

Of all the regulatory reform legislation enacted since 1977, affecting airlines, trucking, railroads, and intercity buses, trucking is the only sector in which the legislation did not recognize the problem of State economic regulation

and include language to preempt it. States may not regulate the rates, routes or services of air carriers, whether the carrier owns and/or operates its own aircraft (direct air carriers) or purchases space on the aircraft of other carriers (indirect air carriers). States that regulate intrastate rail operations must have their regulatory policies certified by the ICC for consistency with Federal standards. Intercity bus carriers can appeal harsh or unfair State regulatory decisions concerning entry, fares, and service abandonments to the ICC, which can overrule them.

State Regulation of Package Express Carriers

The package express industry is one in which we lead the world because of its integrated multimodal operations. This industry has its roots in transportation deregulation, and would not exist today without the work of this Committee in removing the chains of interstate regulation. Our integrated multimodal operators are the envy of the world, with impressive international, national, and local services. Today, there is even impressive small package service in predominantly rural States such as West Virginia, Arkansas and Montana. In fact, rural States have more service today than at any other time in our history.

However, under current law, the playing field for package express carriers in intrastate commerce is extremely

uneven. Recently, in the nine western states bound by the Ninth Circuit, the Court in Federal Express v. California Public Utilities Commission, 936 F.2d. 1075 (9th Cir., 1991), *cert. denied,* 112 S.Ct. 2956 (1992), applied the broad State preemption provision in the Airline Deregulation Act of 1978 to the trucking operations of FedEx, an air carrier. This exempted FedEx from California's motor carrier controls. Because of its status as an air carrier, FedEx then held a tremendous competitive advantage over its competitors who were still regulated. Although some of its competitors conduct similar operations, they are not organized as air carriers. For example, UPS has an air carrier operation, but the company itself is not an air carrier. FedEx was freed from expensive paperwork requirements such as tariff filing and financial reporting, and could freely exercise its guaranteed on-time delivery feature.

Last year, in response to this inequitable situation, California enacted legislation extending this exemption enjoyed by FedEx as a result of its court victory, to its competitors which are motor carriers affiliated with direct air carriers. The California legislation denied this exemption, however, to those using a large proportion of owner-operators instead of company employees, thereby denying it to Roadway Package System, even though the Roadway holding company includes an air carrier operation.

Also recently, the State of Texas decided to follow (and broaden somewhat) the decision of the Ninth Circuit Court. It has removed the surface operations of integrated air-motor package carriers from Texas Railroad Commission regulatory jurisdiction. However, competitors whose operations are not integrated will continue to be regulated. Likewise, Kentucky enacted legislation in May 1994 exempting from its regulation the carriage of packages weighing less than 150 pounds, by motor carriers affiliated with either direct or indirect air carriers.

In another 40 or so States, package express carriers are subject to various regulatory schemes, and many others are not even allowed to compete because they have been denied intrastate operating authority by public utility commissions in those States.

Legislative Solution of Section 211

The Administration supports the legislation before the Committee, section 211 of S. 1491, that would help alleviate the burden of State regulation on motor carrier operations. Depending on how many carriers would qualify for the regulatory relief, section 211 could provide substantial costs savings for this important transportation industry. Such a legislative solution would codify in law the Ninth Circuit FedEx decision, with one major difference. It would

make that regulatory reform available to a much broader class of carriers.

Airline operations are already free from State regulation under a strong federal preemption provision in current law. The controversy arises for airlines offering trucking services as part of their freight operations. Section 211 would supplement the federal preemption provision under current law and preempt States or compacts of States from regulating the economic, non-safety-related activities of "intermodal all-cargo air carriers." The latter term is defined in the legislation. Such carriers include certificated air carriers, such as FedEx, that own and operate aircraft. It also includes what are known as "indirect" air carriers that do not own or operate aircraft, but simply purchase space on the aircraft of others and sell it to shippers. Section 211 would exempt from State regulation the operations of motor carriers that (1) are either affiliated with air carriers through common ownership, or (2) use air carriers a substantial number of times.

That means that any air carrier, including an indirect air carrier (also called "air freight forwarder"), offering motor carrier operations would fall under the exemption; in addition, any regulated for-hire motor carrier could qualify by purchasing such an air carrier, conducting operations as such an air carrier, or by using such an air carrier at least

15,000 times per year. It is unclear what constitutes 15,000 uses, i.e. whether this refers to shipments or packages or pieces. We urge that this be clarified.

Although section 211 has been characterized by some as a narrow provision that would benefit only a few relatively large companies such as UPS and FedEx, it appears that any regulated carrier ("which has authority to provide transportation" from the ICC or a State agency) could qualify if it wished to do so. Nor is its impact limited to intermodal package carriers, since it applies to "property," which we interpret to mean freight or cargo of all kinds and sizes, as well as "pieces, parcels, or packages." We do note that there may be a technical drafting problem relating to State routing controls for safety purposes. We would be happy to work with the Committee to clarify that issue.

Thus, this legislation would help to even the playing field for those carriers willing to avail themselves of the opportunity. If given broad interpretation, it could eventually yield $3 billion to $8 billion per year in savings.

We therefore strongly support this legislation because of the importance of the air cargo sector of our transportation industry. The Administration is interested in lowering barriers to entry and enhancing competition. At the

same time, we are concerned that the regulatory relief provided could disadvantage some smaller motor carriers, including bus companies. We acknowledge that, if this legislation is enacted, there may be a transition period during which smaller, less sophisticated carriers, might find it hard to adjust. Much will depend on the way in which State legislatures and regulatory agencies respond the change and take actions to assure the fairness and equity of their regulatory regimes.

We want to find ways to ease that transition and minimize any disadvantages for small operators. We would be happy to work with the Committee in that effort.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions.

TESTIMONY OF DREW LEWIS
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE COMMITTEE ON PUBLIC WORKS
U.S. HOUSE OF REPRESENTATIVES
JULY 20, 1994

MY NAME IS DREW LEWIS. I AM THE CHAIRMAN OF UNION PACIFIC CORPORATION, THE PARENT COMPANY OF OVERNITE TRANSPORTATION, LOCATED IN RICHMOND, VIRGINIA, AND SKYWAY FREIGHT, BASED IN WATSONVILLE, CALIFORNIA. I VERY MUCH APPRECIATE THIS OPPORTUNITY TO TESTIFY ON SECTION 211, THE "INDIRECT ALL-CARGO AIR CARRIER" PROVISION.

WHEN I WAS SECRETARY OF TRANSPORTATION FROM 1980 TO 1982, I APPEARED BEFORE CONGRESS NUMEROUS TIMES TO ASK THAT TRUCKING COMPANIES BE FREED OF STATE REGULATION THAT ASSIGNS ROUTES AND RATES FOR INTRASTATE HAULS. IT IS IRONIC TODAY, 14 YEARS LATER, I AM BACK BEFORE CONGRESS SEEKING THAT SAME FREEDOM FOR OUR OWN TWO COMPANIES, OVERNITE AND SKYWAY.

SECTION 211 WOULD FREE THE AMERICAN ECONOMY OF THOSE REGULATORY BURDENS, MR. CHAIRMAN, AND WE URGE ENACTMENT OF IT, OR A REASONABLE ALTERNATIVE TO IT, PROMPTLY. THERE ARE A NUMBER OF STORIES I COULD SHARE WITH YOU ABOUT OUTDATED STATE RESTRICTIONS, BUT THIS ONE IS MY FAVORITE BECAUSE I KNOW ONE TIME OR ANOTHER YOU HAVE BEEN STUCK IN TRAFFIC ON THE WOODROW WILSON BRIDGE, PARTICULARLY THIS TIME OF YEAR

WITH FOLKS HEADING TO THE BEACH ON FRIDAY AFTER WORK.

OVERNITE IS BY FAR THE LARGEST MOTOR CARRIER IN VIRGINIA. HOWEVER, THE STATE DOES NOT PERMIT OVERNITE TO INTRASTATE HAUL BETWEEN RICHMOND AND ALEXANDRIA -- THE LARGEST MARKET IN THE STATE. PLEASE TAKE A LOOK AT THE MAP PROVIDED. IN ORDER FOR OVERNITE TO SERVE RETAIL STORES IN ALEXANDRIA, WE USED TO DRIVE THE SHIPMENT ORIGINATING IN RICHMOND OVER THE WILSON BRIDGE TO OUR TERMINAL IN LANDOVER, MARYLAND. IN LANDOVER WE WOULD BREAK DOWN THE SHIPMENTS AND TRUCK BACK FREIGHT INTO NORTHERN VIRGINIA FOR DELIVERY. THIS QUALIFIES AS AN INTERSTATE HAUL, PERFECTLY LUDICROUS .... BUT LEGAL. THAT IS HOW WE USED TO GET AROUND VIRGINIA'S ANTIQUATED INTRASTATE AUTHORITY. ESSENTIALLY, THE SHIPMENT WOULD GO MILES OUT OF ITS WAY TO SATISFY A STATE DIRECTIVE THAT DOES NOT CARE ABOUT THE CUSTOMER, THE ENVIRONMENT, OR THE HILL STAFF THAT HAS WORKED HARD ALL WEEK ONLY TO END UP STUCK BEHIND AN OVERNITE TRUCK ON WOODROW WILSON BRIDGE GOING TO LANDOVER, MARYLAND, IN ORDER TO GO BACK TO ALEXANDRIA!!!

THIS IS INEFFICIENT AND UNPRODUCTIVE USE OF BRIDGES, ROADS, TIME, AND FUEL. FURTHER, WE CAN'T EVEN USE THE LANDOVER TERMINAL TO SERVE

ALEXANDRIA INTRASTATE ANYMORE BECAUSE WE RECENTLY BUILT A TERMINAL IN MANASSAS, VIRGINIA. THE LAW PRECLUDES US FROM BYPASSING THE TERMINAL IN MANASSAS TO GO TO LANDOVER. THIS IS FOOLHARDY AND A WASTEFUL WAY TO SERVE OUR CUSTOMERS. WE KNOW BECAUSE THEY'VE BEEN COMPLAINING. THEY WANT ONE COMPANY TO HANDLE THEIR TRANSPORTATION NEEDS.

SKYWAY, THE NEWEST MEMBER OF THE UNION PACIFIC FAMILY, IS A MULTI-FACETED LOGISTICS AND TRANSPORTATION COMPANY HEADQUARTERED IN WATSONVILLE, CALIFORNIA, THE CHAIRMAN'S BACKYARD. AT ANY GIVEN HOUR, SKYWAY MAY BE RUSHING A CRITICAL PART FOR A CUSTOMER BY CHARTER JET, MOVING AN ENTIRE WAREHOUSE BY STACK TRAIN, RUNNING A DISTRIBUTION CENTER, ASSEMBLING AND TESTING COMPUTERS, OR DEVELOPING A COMPREHENSIVE TRANSPORTATION AND LOGISTICS STRATEGY. IN A NUTSHELL, THE COMPANY SPECIALIZES IN CUSTOMIZED LOGISTICAL SUPPORT TAILORED TO THE NEEDS OF ITS CUSTOMERS ACROSS THE COUNTRY.

COMPETITIVE ADVANTAGE IN ANY MARKETPLACE IS THE KEY TO MAINTAINING AND EXPANDING MARKET SHARE. AND SPEED IS THE KEY ELEMENT IN GAINING THAT COMPETITIVE EDGE, FASTER PRODUCT DEVELOPMENT

CYCLES, REDUCED MANUFACTURING CYCLE TIMES, SPEEDIER ORDER CYCLE TIMES, AND TIME-DEFINITE DEPENDABLE DELIVERIES. THE COMPANIES THAT CONCENTRATE ON SPEED -- TIME TO MARKET -- WILL GAIN THE COMPETITIVE ADVANTAGE AND ULTIMATELY WIN THE RACE TO BUSINESS SUCCESS. THIS IS WHY THE ADVANTAGE FEDERAL EXPRESS GAINED WITH THE NINTH CIRCUIT COURT DECISION HAS MADE IT STRATEGICALLY IMPERATIVE FOR THOSE OF US WHO COMPETE FOR CUSTOMERS WITH FEDERAL EXPRESS TO OBTAIN THE SAME ADVANTAGES IN THOSE NINE STATES.

AT UNION PACIFIC WE PRIDE OURSELVES ON SEAMLESS SERVICE FOR OUR CUSTOMERS WHETHER IT BE BY RAIL, TRUCK, OR AIR. WE NEED THESE ANTIQUATED STATE RESTRICTIONS LIFTED. I HOPE THE PUBLIC WORKS COMMITTEE WILL LOOK FAVORABLY ON THE INTENT OF SECTION 211 AND ENACT IT OR A REASONABLE ALTERNATIVE TO IT IN ORDER TO LEVEL THE PLAYING FIELD. OUR GOAL IS TO SOLVE THE PROBLEM; WE ARE FLEXIBLE AS TO HOW IT IS DONE -- AS LONG AS IT IS DONE PROMPTLY.

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT. IT IS INDEED A PLEASURE TO BE WORKING WITH MY FRIENDS ON PUBLIC WORKS AGAIN.

Introduction.

Good morning, Mr. Chairman and Members of the Subcommittee. I am James E. Merritt, a partner in the law firm of Morrison & Foerster, and tax counsel for Consolidated Freightways, Inc. With me is Michael W. Yost, Director of Taxes for Consolidated. We thank you for this opportunity to appear before you today to express our views on Section 211 of Senate Bill S. 1491.

Consolidated Freightways, Inc. and its affiliated companies is one of the largest cargo transportation companies in the United States. Its motor carrier companies employ over 28,000 persons. Its affiliate, Emery Worldwide, is an integrated air freight carrier which employs 7,500 persons. Both the motor carrier companies and Emery operate throughout the United States and internationally.

As defined in Section 211 of S. 1491 Consolidated Freightways, Inc. and its affiliated companies are "an intermodal all-cargo carrier". Accordingly, they will be directly affected by enactment of Section 211 as part of Senate Bill 1491.

Consolidated supports the position of the American Trucking Associations, Inc. with regard to preemption of state regulation of rates and routes as described in detail by other witnesses. Mr. Yost and I wish to address subsidiary issues regarding: (1) the value of the state operating rights or authorities, (2) the impact of enactment of Section 211 upon the value of those rights or authorities, and (3) the desirability that this Subcommittee express its concern with regard to the federal income tax consequences of any loss in the value of intrastate operating rights.

Value of Intrastate Operating Rights.

State operating rights and authorities acquired under the state regulatory regime which has existed for many decades have substantial value. Many of these rights were acquired by carriers in regulatory proceedings which involved substantial expenses to establish "public convenience and necessity". Rights were also purchased by carriers either directly, as a purchase of all of the assets of another carrier, or indirectly, by the purchase of the stock of another carrier followed by liquidation of the acquired carrier or an election to treat the stock acquisition as a purchase of assets. The costs of intrastate operating rights were established by these transactions and by appraisals of the assets of an acquired company, including its operating rights and authorities.

In some cases carriers which acquired the stock of another carrier have not yet established the costs or value of the intrastate operating rights held by the acquired company. These situations require special provisions to ensure equitable treatment which we will describe later.

Carriers report their intrastate operating rights and authorities as assets in their financial statements. Lenders, and others, rely upon the value or costs of these intrastate operating rights in evaluating the credit worthiness of carriers. We have no complete study of the industry's total cost basis in these rights, but our best estimates, at this time, are that the industry's total cost basis is less than $200 million. The value

of intrastate rights held by Consolidated Freightways, Inc. and affiliated companies is approximately $11 million.

Loss in Value of Operating Rights.

Deregulation by preemption of state restrictions upon intrastate operations will greatly benefit the public as described by others. It will also adversely affect the values of the intrastate operating rights held by the affected carriers. This loss in value of the intrastate operating rights is similar to the result of deregulation of interstate operating rights awarded by the Interstate Commerce Commission ("ICC") in the Motor Carrier Act of 1980. Pub. L.96-296, 96th Cong. (July 1, 1980).

As a result of the deregulation of interstate operating rights in 1980 the Financial Accounting Standards Board ("FASB") required carriers to write-off the costs of their interstate operating rights as an extraordinary item. FASB Exposure Draft, "Accounting for Intangible Assets of Motor Carriers," (Oct. 24, 1980) now included in Statement of Financial Accounting Standards No. 44. ("FAS 44"). The basis for the FASB action was that the resale and collateral values of the interstate operating rights had been substantially impaired resulting in an economic loss to the carriers which should be charged to income. The FASB also concluded that a write-off of the costs of similarly deregulated intrastate operating rights would be required. FAS 44, App. B, para. 23.

Historical Precedent for Tax Deduction.

We know that this Subcommittee is not a tax writing Committee and we do not request that a tax provision with regard to the loss of value of the state operating rights be included in this legislation. It is, however, appropriate for this Subcommittee to include a statement of its concern in the report on this legislation.

In the Motor Carrier Act of 1980 the House Committee on Public Works and Transportation included in its report on the bill the following statement:

> . . . concern has been expressed that this legislation might result in a severe reduction in the value of motor carrier operating rights which, in many cases, are now carried as assets on the carriers' books. The Committee also intends to monitor the effect of the Act on the value of operating rights. The Committee would hope that the Committee on Ways and Means would also hold oversight hearings on this matter since that Committee would be the appropriate forum to consider any tax relief legislation that might be appropriate.

We submit that a similar statement by this Committee would be appropriate with regard to Section 211.

Indeed, in 1981 in the Economic Recovery Tax Act of 1981 ("ERTA"), Pub. L. No. 97-34, 95 Stat. 172, 265.6, legislation was enacted to permit carriers to deduct their basis in their ICC operating rights as a result of the deregulation of interstate operating rights in the Motor Carrier Act of 1980. Section 266 of ERTA permitted carriers to amortize the total amount of their basis in the deregulated operating rights over a 60 month period. The record considered by Congress in 1980 and 1981 with regard to the loss in value of the ICC operating rights as a result of

deregulation in the Motor Carrier Act of 1980 is equally applicable to intrastate operating rights affected by Section 211.

Uniform and Equitable Relief.

To ensure equity amongst the various carriers affected by enactment of Section 211 provisions similar to Section 266 of ERTA should be considered. Thus, carriers should be entitled to deduct their actual basis (cost) of all intrastate operating rights either, immediately, in the year of enactment, or over a period not to exceed 60 months as provided in ERTA.

Carriers who directly acquired intrastate operating rights will have their cost basis identified with those rights. Other carriers who indirectly acquired intrastate operating rights by purchase of the stock of companies which held the operating rights may not have liquidated those companies nor made an election under Section 338 of the Internal Revenue Code (the present equivalent of Section 334(b)(2) considered in ERTA) to treat the acquisition of the stock as an asset acquisition. Equitable and fair treatment should not distinguish between these carriers. To achieve equity a provision should be included to authorize regulations by the Secretary of the Treasury to allow carriers to compute their basis in the operating rights as though a hypothetical liquidation or Section 338 election had been made at the time of the purchase of the stock. Section 266 of ERTA included such equitable relief for carriers as a result of deregulation in the Motor Carrier Act of 1980.

Under existing law the ability of carriers to obtain an immediate deduction may depend upon the facts and circumstances of particular cases. It may also depend upon which court has jurisdiction of the case. Without legislative guidance it is possible that the Internal Revenue Service would challenge an immediate deduction of the basis of intrastate operating rights in some or all cases. This could produce the same burdensome administrative and litigation nightmare which Congress recently sought to eliminate with regard to the amortization of other intangible assets in Section 197 of the Internal Revenue Code. For this reason also we believe that it is important that this Committee express its view that a fair and uniform rule should apply to permit the deduction of the loss of value of the intrastate operating rights affected by Section 211.

Conclusion.

Thank you for permitting us to express these views regarding Section 211 and the important legislation before this Committee. We will be happy to respond to any questions which you may have.

INTRODUCTION

Mr. Chairman, Members of the Subcommittee, my name is Larry S. Mulkey. I serve as the President of Ryder Dedicated Logistics, Inc., which is a subsidiary of Ryder System, Inc. Ryder Dedicated Logistics, or RDL, is at the forefront of a revolution in the way that manufacturing companies transport freight and manage inventories. I am here today because outdated and unnecessary state motor carrier regulations are impeding the progress of American businesses in reducing their transportation costs and improving the efficiency of their operations. On behalf of Ryder and its thousands of employees and customers worldwide, I ask the Subcommittee to eliminate these remaining regulatory barriers.

Ryder System comprises a number of companies providing transportation services. Founded in 1933, Ryder has grown from a small cargo-hauling business using a single truck to a multifaceted highway transportation and logistics company with annual revenues of over $4.2 billion. Ryder employs more than 38,000 people worldwide, including more than 35,000 in the United States, and has over 172,000 vehicles in its fleet.

Although people are most familiar with Ryder's yellow rental trucks for do-it-yourself household moves, our consumer rental business is only a small portion of our highway transportation services.

Our commercial truck leasing and rental business, operating as Ryder Truck Rental, Inc., is the world's largest truck rental and leasing company. We have over 10,000 customers in the United States and Canada. Although Ryder supplies vehicles to many Fortune 500 companies, we provide vehicles to many small businesses as well. In fact, our customers' average fleet has only five vehicles.

For our full service leasing customers, Ryder provides the vehicles, financing, maintenance, administration, insurance and all related support that businesses need to transport their raw materials and finished products. This relieves our customers of the financial and administrative burden of owning and maintaining vehicles and enables them to concentrate on their core businesses. In addition, Ryder's commercial truck rental business provides vehicles to a variety of companies for a day, a week, or longer.

Through our Automotive Carrier Division and its operating companies, Ryder is also the nation's largest highway transporter of new automobiles and light trucks. We transport more than 37 percent of all of the new cars and light trucks sold in the United States and Canada (about six million units each year). Our customers include all of the major domestic automobile

manufacturers and foreign manufacturers that sell significant numbers of new vehicles in the U.S.

Additionally, Ryder is a major provider of passenger transportation in the United States. Ryder Student Transportation Services is the country's second largest provider of student transportation services, carrying more than 420,000 children to and from school daily in over 500 school systems in 19 states. Through ATE Management Services, Ryder is the nation's largest private manager of municipal transportation systems. We manage or operate 88 public transit systems in 28 states. Locally, ATE Management Services operates the Montgomery County, Maryland Metro Ride-On transit bus service.

The company I head, Ryder Dedicated Logistics, is the fastest growing component of Ryder's corporate family. RDL provides dedicated contract carriage and logistics service to customers in over 30 industries. This service goes well beyond traditional motor carriage functions. RDL recently acquired LogiCorp, a logistics management company. Through its new LogiCorp division, RDL in essence becomes the freight traffic department for its customers. We act as the shipper's agent to put together the intermodal transportation network our customers need. This includes air freight and air freight forwarding

service, less-than-truckload and truckload transportation, and rail and ocean shipments.

RDL brings value to its customers by planning, implementing and controlling the efficient, cost-effective flow and storage of raw materials, in-process inventory, finished goods and related information from the point of origin to the point of consumption. This service relieves a customer of the burden of running a transportation system and helps to develop efficiencies along the entire logistics supply chain. Handling challenges ranging from hiring and managing drivers and scheduling and transportation of in-bound materials and components through the delivery of the finished product to the end user, dedicated logistics can deliver significant productivity gains and cost savings to customers.

Transferring the logistics service to a dedicated provider like RDL is a relatively new concept that has dramatically changed manufacturing and distribution in this country. Ten years ago, this service virtually did not exist. But rising distribution costs and increased global competition have created new logistics challenges in all industries. Businesses are realizing that outsourcing logistics functions can provide the edge needed to gain such critical competitive advantages as improved customer service, lower overall costs, increased flexibility and enhanced control.

Today, RDL is the largest provider of dedicated logistics in a market that is $10 billion a year today and is expected to grow to $25 billion a year within the next five years. This phenomenal market growth is expected because using third-party providers like RDL allows our customer to focus its attention and resources on its core business. One of the most important features of our dedicated logistics service is that it allows the customer to deal with a single provider for all of its transportation and logistics needs.

THE NEED FOR FURTHER DEREGULATION

Unfortunately, Ryder and other providers of transportation services are restricted by many state laws that prohibit, limit or delay our ability to serve customers on an intrastate basis. Although Congress substantially deregulated motor carrier operations for interstate transportation almost 15 years ago, 41 states still have arcane laws regulating entry, rates and services for intrastate trucking. These laws are vestiges of the days before the construction of the Interstate Highway System, when companies often limited their distribution network to the area near their manufacturing facilities. Today, national and international distribution of products is the norm rather than the exception, and manufacturers are continually seeking ways to streamline the distribution process, reduce costs, and improve

efficiency. State regulation of intrastate trucking operations is in direct conflict with those objectives.

The following are but a few examples of state laws that prevent Ryder from providing its intrastate services in a timely manner to customers:

* Although RDL is the fastest growing Ryder company, many states limit the number of customers that we may serve at one time. Mississippi, Nevada and South Carolina limit contract carriers to doing business with only three shippers at one time. Louisiana limits us to five customers at one time. North Carolina has a rule limiting RDL to seven contracts, which forced us to petition for an exemption when our business grew beyond the contract limit. Texas limits us to 15 contracts. The limit was five until RDL fought the Railroad Commission over several years to raise the number.

* These contract limits arbitrarily restrict our business growth. For example, RDL recently agreed to provide dedicated logistics and motor carrier service to a major retailer of automobile tires in Nevada, and the plan called for establishing a distribution center in Las Vegas. Although this new center would bring a

number of new jobs and additional tax revenue to the state, the agreement would require RDL to provide intrastate motor contract carriage, and that would put RDL over the limit of three contracts. RDL has proven that it can compete in the market for dedicated logistics, but we cannot serve all of the companies that want to do business with us because of state laws that defy any modern rational justification.

* The Nevada Public Service Commission also may take up to a year to decide each application for new operating authority, regardless of whether the application is contested. The Commission recently began a proceeding to consider a 180-day cap on review of authority applications. Even if this cap was adopted, RDL would have to wait six months after negotiating a contract with a customer before it could know that it is legally able to provide intrastate contract carriage, assuming that the requested operating authority is granted.

* These customer-specific authority applications are extremely time-consuming, even when the applications are unopposed by other carriers. Usually, it takes 45-60 days for a state commission to grant the requested authority, although the waiting period may vary, as in

Nevada's case. Pennsylvania usually takes about 90 days, and temporary authority to provide service during the waiting period is unavailable as a practical matter. These delays prevent RDL from implementing its full complement of services when the customer demands them. The result is less efficient service and higher distribution costs for our customers.

* Unlike motor contract carriage permits issued by the Interstate Commerce Commission, many states require contract carriers to obtain separate authority for each customer that they serve. Thus, every time RDL negotiates a contract with a new customer that calls for intrastate transportation in such a state, RDL must apply for and obtain a new permit. This process is extremely costly. In 1993, RDL made 51 intrastate authority applications to serve 45 customers in 20 states. The total cost of making these applications was over $750,000, of which over $400,000 went for filing fees and attorneys' fees alone.

* In some cases, operating authority is flat-out denied. In Texas, RDL acquired a fleet of vehicles that had been specially designed and built to meet the specific needs of a shipper of prefabricated buildings. There

were no other vehicles like this in the world. Because a specialized motor carrier already certificated by the Railroad Commission of Texas offered to serve our customer using ordinary, non-specialized, inefficient equipment, RDL's application for intrastate operating authority was denied, even though the customer wanted the efficiencies of our one-of-a-kind specialized equipment.

* In another instance in Texas, Ryder twice attempted to convert a large private carrier tank truck operation to a dedicated contract or specialized for-hire operation. Both authority applications were denied by the Railroad Commission at the request of numerous bulk carriers already certificated by the Commission. Our customer had hauled its product in its own trucks as a private carrier since 1962. The protesting carriers had never provided or even solicited to provide this transportation service to our customer. For over ten years, Ryder was unable to provide the contract carriage service, and the customer continued to haul its product in its own trucks even though its business plan called for using our more efficient dedicated contract carriage operation. Although the Texas legislature is currently considering intrastate

regulatory reform for motor carriers, specialized carriers would be unaffected by the proposed changes.

* Moreover, many states have laws that require RDL, as a dedicated contract carrier, to charge at least the same rates as motor common carriers in that state. These pricing restrictions make no economic sense in a market-driven economy and they frustrate the desires of shippers to obtain the best service possible, at the lowest price available.

* In fact, New York and South Carolina have required RDL to become motor common carriers in order to offer our services to more than a limited number of customers. This requires RDL to file tariffs with the state public utility commission and to comply with other regulations affecting common carrier operations, even though RDL offers the specialized service of a dedicated contract carrier.

* State laws also unnecessarily hamstring the operations of private motor carriers, which are the primary truck leasing and rental customers of Ryder Truck Rental. For instance, approximately 35 states prohibit a company like Frito-Lay from hauling products intrastate

for its parent company, Pepsi-Cola, for compensation. In 1980, Congress determined that allowing compensated intercorporate hauling for interstate traffic would reduce empty backhauls, take underutilized trucks off the road, contribute to energy conservation and ease traffic congestion. These expectations proved true for interstate transportation, and are no less valid for intrastate service.

* Also, approximately 31 states still prohibit a company from leasing trucks and drivers from a single provider for intrastate transportation, although this is clearly the most efficient means of establishing a leased fleet operation. In these states, a company must lease trucks from one lessor and drivers from another source, which raises the cost of the entire operation.

* Lastly, there is an ongoing legal issue regarding what transportation service is properly classified as interstate and what traffic is intrastate in nature. For example, if a shipment goes from Illinois to a warehouse in California, and then is subsequently shipped to another point in California, there is a question as to whether the second leg is part of a continuous interstate movement or is a separate

intrastate movement that is subject to state regulation. Shippers and carriers have been forced to litigate this issue repeatedly at the ICC and in federal courts,[1] and state regulatory commissions have fought aggressively in these proceedings to preserve their regulatory jurisdiction. Because the result depends on the facts of each case, it is difficult to predict with certainty whether particular shipments will be regulated by the state or the ICC. Again, this makes service to our customers exceedingly difficult.

The current patchwork system of state regulation is often arbitrary, non-substantive, economically inefficient and protectionist. Because of these state laws restricting our ability to do business in a number of states, Ryder has long supported federal legislation that would preempt state regulation

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[1] See, e.g., Merchants Fast Motor Lines, Inc. v. Interstate Commerce Comm'n, 5 F.3d 911 (5th Cir. 1993); Pittsburgh-Johnstown-Altoona Express, Inc. -- Petition for Declaratory Order, No. MC-C-30129 (ICC decision served May 7, 1992), appeal pending sub nom. National Motor Freight Traffic Ass'n, Inc. v. Interstate Commerce Comm'n, No. 93-1870 (D.C. Cir. docketed December 27, 1993). Even when the courts rule in favor of federal regulatory authority, the rulings might be of limited usefulness to shippers and carriers. For instance, although the U.S. Court of Appeals for the Fifth Circuit ruled in the Merchants Fast Motor Lines case that the shipments were in interstate commerce, that holding does not bind state agencies outside the Fifth Circuit. Thus, the application of state regulation to a shipment may depend arbitrarily on the geographic location of the transportation rather than any coherent and uniform regulatory policy.

of rates, routes or services of the intrastate operations of motor carriers that operate in interstate commerce.[2/] We have been strong proponents of H.R. 1077, the Private Motor Carrier Equity Act, which would lift many of the outdated and unnecessary intrastate regulations on private carriers.

Congress determined back in 1980 for interstate traffic that the marketplace, and not government, should determine which transportation companies are allowed to enter new markets, offer innovative services, and provide flexible pricing options. This change has worked remarkably well for shippers and for the economy in general. There is no rational economic policy reason not to expand that regulatory change to intrastate motor carrier transportation as well.

2/ Surprisingly, trucking is the only mode in which Congress has not already preempted state regulation of intrastate movements by carriers engaged in interstate commerce. Congress long ago preempted state regulation of the airline (1978), rail (1980) and intercity bus (1982) industries.

SECTION 211 OF THE FAA AUTHORIZATION ACT

In 1991, the U.S. Court of Appeals for the Ninth Circuit issued a decision holding that Federal Express is not subject to California state regulations for its intrastate air or trucking operations.[3/] Because Federal Express is an air carrier and not a motor carrier, under that decision it is exempt from all state regulation of its air, motor or air/motor service.[4/]

This court decision has had national repercussions. United Parcel Service and other carriers that compete with Federal Express in providing transportation services have asked the Senate to adopt a provision that places them on the same regulatory footing with Federal Express.[5/] The resulting provision, Section 211 of S. 1491, the Federal Aviation Administration Authorization Act of 1994, would correct the competitive advantage granted in the Ninth Circuit decision by

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3/ Federal Express Corp. v. California Public Utilities Comm'n, 936 F.2d 1075 (9th Cir. 1991).

4/ Section 105(a)(4) of the Federal Aviation Act, 14 U.S.C. § 1305(a)(4), prohibits a state from imposing regulations on the "rates, routes or services" of a federally-certificated air carrier.

5/ The Ninth Circuit decision was based on the fact that Federal Express is an air carrier with ancillary trucking operations, and results in a different regulatory treatment for motor carriers with ancillary air operations. This is not only unfair but also illogical and entirely arbitrary from the standpoint of regulatory policy.

preempting state authority to regulate the air or trucking rates, routes or services of "intermodal all-cargo air carriers." These carriers are defined in the section as:

(1) air carriers;

(2) indirect air carriers (air freight forwarders); or

(3) other carriers with authority to provide transportation services that (i) are affiliated through common ownership with an air carrier or air freight forwarder, or (ii) use, or are affiliated with companies that use, air carriers or air freight forwarders at least 15,000 times annually.

This provision would level the playing field by providing many large and small carriers, including RDL,[9] with the competitive advantage now enjoyed by Federal Express. Customers would enjoy expanded service options and lower rates, while using fewer vehicles to haul the same amount of freight, thereby reducing traffic congestion and fuel consumption.

It is important to recognize that this provision would not affect the ability of states to regulate trucking safety or insurance or to impose truck size and weight restrictions. We at Ryder are very proud of our outstanding safety record, and we go to great lengths to ensure that our vehicles are operated as safely as possible and in compliance with all federal and state

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[9] RDL would be covered under Section 211 as a result of our acquisition of LogiCorp, which as a shipper's agent provides air freight services for its customers on a regular basis.

safety requirements. Thus, we endorse reasonable state regulations that improve the safety of all trucking operations.

We are pleased to note that the Clinton Administration has issued a policy statement of support for Section 211, stating that enactment of this provision "would be an important step in resolving conflicting laws that interfere with efficient intermodal cargo movements."

Although Ryder believes that Section 211 is an appropriate response to the regulatory inconsistency resulting from the Ninth Circuit decision, smaller for-hire and private carriers may be unable to take advantage of the preemption in Section 211, and therefore would still be subject to state regulation. Consistent with our longstanding policy of supporting economic deregulation of trucking, Ryder supports broadening Section 211 to cover all motor carriers, both private and for-hire, that operate both interstate and intrastate. This approach would place all carriers on the same regulatory footing, and allow the marketplace to determine how freight moves and at what price.

In contrast, Ryder would strongly oppose any effort to limit the effect of Section 211 solely to carriers that provide direct air service or to "package express" carriers. The markets for transportation and logistics services are constantly evolving,

and carriers are competing with one another to provide services transporting both large and small packages as well as truckload and less-than-truckload lots for expedited delivery. As previously mentioned, RDL is in a $10 billion a year dedicated logistics market that is growing at a frenetic pace. A few years from now we expect that this market will involve many new players and new service offerings. Discrete transportation markets no longer exist -- carriers must provide services that are demanded by customers, not by regulatory agencies. RDL and its competitors are constantly tailoring services to meet customer needs, and we cannot be limited by some entirely artificial regulatory classification of what our market services should look like. Congress and the states need to permit providers of transportation and logistics to develop new service options and new price formats without requiring regulatory approval for each new transaction.

This legislation is long overdue. We encourage this Subcommittee to act as expeditiously as possible to include a provision on regulatory preemption for the motor carrier industry as part of the FAA Authorization Act.

Thank you for the opportunity to present our views to the Subcommittee on a matter that is extremely important to our company, our employees, our customers, and American business.

Statement

of

United Parcel Service

To the

Subcommittee on Surface Transportation

House Public Works and Transportation Committee

July 20, 1994

on

The Federal Aviation Administration Authorization Act of 1994

S. 1491

Presented by:

James A. Rogers

Vice President

I appreciate the Committee allowing United Parcel Service the opportunity to offer comments regarding S. 1491, the Federal Aviation Administration Authorization Act of 1994, and more particularly, Section 211 of that bill.

My last appearance before this committee was on March 31, 1992 at which time, I testified in support of HR 3221, the Intermodal Competitiveness Act of 1991. The problem which Section 211 of S. 1491 confronts is the same one that HR 3221 dealt with.

At its most basic, I am here because of the decision of the 9th Circuit Court of Appeals in the case, Federal Express v. California Public Utilities Commission, 716 F. Supp. 1299 (D.C. Cal. 1989), 936 F.2d 1075 (9th Cir. 1991), 112 S.Ct. 2956, *writ certiorari* denied (1991). This case came about when Federal Express objected to the jurisdiction of the Public Utilities Commission (PUC) over intrastate surface movements made by Federal Express in California. They sued to block PUC jurisdiction in the U.S. District Court. The District Court found for the PUC. On appeal, the 9th Circuit Court found that the Federal Aviation Act, 49 U.S.C. section 1305 completely preempted the PUC from any jurisdiction over the activities of Federal Express.

This allowed Federal Express to perform surface operations without restriction in competition with regulated carriers that were heavily restricted as to the services they could offer and the rates that they could charge. More basically, the decision said that an airline that operates trucks is unregulated while a trucking company that operates an airline is regulated.

This left UPS at a serious competitive disadvantage in the 9 states of the 9th Circuit. UPS would have to conform to the economic regulations of the state commissions while its direct competitor would not. This allowed Federal Express a great deal of market flexibility.

Federal Express realized that their new found flexibility was extremely desirable but was not necessarily permanent. Even though the U.S. Supreme Court denied certiorari on Federal Express v. California Public Utilities Commission, they were still at risk if another circuit court were to come to a negative decision on the same facts. Federal Express and UPS sought to come to a reasonable legislative solution. We strongly supported HR 3221, originally sponsored by Congressmen Clement (D-TN) and Upton (R-MI). This committee held hearings exploring the issues

raised by HR 3221. Eventually, despite 190 cosponsors, the bill died at the end of the last Congress.

This year, an amendment was offered in the Senate to the Federal Aviation Administration Authorization Act which would act nationally to remove jurisdiction of state regulatory agencies over the surface movements of air-ground intermodal carriers. The definition of air-ground intermodal carriers was extended to include those transportation operations in which a common controlling interest was held between surface operations and direct or indirect air carriers operations. This measure was broadened further to include transportation companies that used the services of direct or indirect air carriers 15,000 times annually.

There are many important reasons for UPS's support of the FAA Authorization bill besides the market place equality it gives to all air-ground intermodal competitors. I would like to detail a few of these. UPS serves every address in all 50 states. If UPS needs to change its rates, it must file these rate changes at both the Interstate Commerce Commission and with the 38 state commissions that still have economic regulation. All of our rate filings with the ICC since 1980 have been within the zone of rate freedom (ZORF) which automatically allows increases that are within the zone.

The states on the other hand do not have ZORF regulations. In 1993, 13 states out of the 41 that imposed regulation at that time suspended the UPS proposed rate increase. Six of these states acted on the single protest of a shipper who served those states only in interstate commerce. UPS lost almost $9 million in revenue which could never be recovered.

Currently, two states are continuing suspension of a rate increase which was scheduled to go into effect on February 7, 1994. In Colorado, only one shipper, whose weekly bill averaged less than $150, objected to our increase. Over 19,000 other shippers in that state did not object.

In North Carolina, the North Carolina Utilities Commission acting on its own motion suspended our application. The Commission is still seeking more information after having held complete hearings on this application. These 1994 rate suspensions have meant lost revenue to UPS of over $1.8 million.

Ultimately, the costs associated with intrastate economic regulation are passed on to consumers. A 1991 U.S. Department of Transportation study estimates that intrastate regulation is costing the economy approximately $6 billion per year. Beyond a dollar figure, our customers are affected in terms of the services we are able to provide them. Because we must also get state approval in order to change a service offering, we are not

able to efficiently provide our customers with the services they demand. Lengthy and costly delays in approvals frustrate our customers and make it harder for them to do their jobs.

I would not be here today discussing these issues if this committee and this Congress had not passed landmark legislation in 1977, 1978 and 1980. These bills were called regulatory reform bills and changed the way the air cargo, air passenger and the trucking industry would function. No longer would Federal Regulators determine who could serve and how much they could charge in these industries, the market would function to make these determinations.

These reforms allowed UPS to greatly increase both the kind and level of service it offered to our country. One provision of the Motor Carrier Reform Act prohibited the ICC from any longer restricting carriers from handling movements that had a prior or subsequent movement by air. State regulation of the air cargo industry was prohibited by the 1978 Aviation Act. The Motor Carrier Regulatory Reform Act continued to allow the states to regulate rates, routes and services of motor carriers.

Prior to passage of the Motor Carrier Act of 1980, UPS was restricted in large areas of the country from offering services which had a prior or subsequent movement by air. Following enactment of the Motor Carrier Act on July 1, 1980, UPS offered a nationwide second day air service to all points within the 48 states on August 15, 1980. This business was a great success. Shortly afterwards, in order to secure sufficient, dependable air lift to handle this service, UPS began to purchase cargo aircraft. These aircraft were operated on schedules set by UPS by contractors who had airline certificates. In 1983, we began providing next day service between particular city pairs and in 1985 offered nationwide next day air service.

In 1988, UPS secured its own airline certificate and ended contract operations. It operates 155 large cargo aircraft and charters over 300 more, smaller aircraft every night. In addition, UPS has firm orders on over $4.2 billion of new cargo aircraft which will be received by 2002. In 1980, UPS had $600 million worth of motor carrier equipment on its books. At the end of 1993, it had over $2.6 billion. In 1980, UPS had no aircraft on its balance sheet. At the end of 1993, UPS had over $2.9 billion in aircraft, the largest single item on the balance sheet.

UPS is a much different company today than it was in 1980. This great change could not have happened without both air cargo and motor carrier reform. As a result of this change, UPS has increased the number of its domestic employees from approximately 111,000 in 1980 to over 250,000 in 1994.

Our business has changed in other important ways. Regulators used to delineate our services. We could offer only those services that they approved. Today, our customers drive our service offerings. Prior to 1980, it used to be enough that we delivered the packages undamaged and on time. Today, we have invested billions of dollars in information technology of all kinds that allows our customers to know how and when we serve them, their customers and their other needs. We have gone from being a company that tracked millions of shipment per day on paper to a paperless company using computers that can share information with our customers within minutes of delivery.

Many in the motor carrier industry are arguing before this committee today that they need to be included among the air ground intermodal carriers because they will not be able to compete with UPS if they are not. They point to UPS expansion of its Hundredweight service which is competitive with LTL shipments. We have no objection to these carriers having as much regulatory freedom as we would. I would only like to remind the committee and those carriers that they could not raise the rates on minimum shipments indefinitely without the market responding. Our customers asked us if we could serve this market. After careful research, we determined that we could handle small shipments of packages, without changing our existing systems. UPS Hundredweight is competitive with what in the trucking industry is called "kick-on" freight. "Kick-on" freight might be more completely described as shipment of packages too small to be palletized. In order to attempt to control the high labor cost involved in moving "kick-on" freight across their terminals, the industry kept raising its prices on these shipments. Market forces worked. Carriers such as UPS and Roadway Parcel System focussed on these shipments. You can be assured that such carriers will continue to participate in these markets as long as their customers continue to request their presence with their money.

Our shippers today are unconcerned with the mode of transportation used. They are concerned that they get the service offered however it is defined. Whether or not a package is carried on a train or a plane during some part of its transport is not as important as meeting the service commitments. Our customers, whether they are shipping intrastate, interstate or international are concerned only that the parcel arrives when promised.

Some concern has been raised by one union about the possible negative impact on organized labor. We do not agree that there will be any. Rather, labor along with the shipping public will benefit. For example since 1980, 1.4 million jobs have been created in the trucking industry. UPS alone has added approximately 107,000 Teamster and IAM jobs to its work force since July 1, 1980. As we mentioned earlier, we firmly believe

that growth could not have happened without regulatory reform.

The air-ground transportation industry needs further freedom in the market place to continue the expansion of service to the public that has characterized its growth since 1980. The 9th Circuit Court decision has created uncertainty for our industry throughout the country. We are willing to serve. We are willing to compete. Section 211 of S. 1491 provides for real simplification in the regulatory structure which will benefit both shippers and carriers, and ultimately, the customer. It provides carriers greater flexibility to respond to market forces. Most importantly, the elimination of conflicting state regulatory standards within our industry will give the shipping public the opportunity to benefit from our reduced cost of doing business and allow us continued expansion of these important services.

TESTIMONY OF JACK SEIMS, PRESIDENT,
WASHINGTON TRUCKING ASSOCIATIONS
BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
WEDNESDAY, JULY 20, 1994

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS JACK SEIMS. I AM THE PRESIDENT OF THE WASHINGTON TRUCKING ASSOCIATIONS, A TRADE ASSOCIATION REPRESENTING 1,500 MEMBER FIRMS IN WASHINGTON STATE. I AM ALSO THE OWNER AND PRESIDENT OF PRO EXPRESS, WHICH IS AN INTRASTATE LOCAL CARTAGE CARRIER WITH 20 EMPLOYEES. I AM HERE TODAY TO TESTIFY IN OPPOSITION TO SECTION 211 OF SENATE BILL 1491.

WHILE WE RECOGNIZE THAT THE AMERICAN TRUCKING ASSOCIATIONS, ON MOST ISSUES, SPEAKS ON BEHALF OF THE NATION'S TRUCKING INDUSTRY, I THINK IT IS IMPORTANT FOR YOU TO KNOW THAT ON THE ISSUE OF FEDERAL PREEMPTION OF STATE REGULATION - THEY DO NOT SPEAK FOR THE WASHINGTON TRUCKING ASSOCIATIONS.

WE WERE VERY DISHEARTENED WHEN ATA, AT A RECENT EXECUTIVE COMMITTEE MEETING, CHANGED ITS LONG-STANDING POLICY IN OPPOSITION TO INTRASTATE DEREGULATION. OUR MEMBERSHIP FELT ABANDONED ON THIS VERY CRITICAL ISSUE. AT AN EMERGENCY BOARD

OF DIRECTORS MEETING ON TUESDAY, JUNE 28, 1994, THERE WAS OPEN HOSTILITY AND ANGER AT THE THOUGHT OF A FEW LARGE INTERSTATE CARRIERS ADVOCATING DEREGULATION OF INTRASTATE TRAFFIC FOR THEIR OWN GAIN AND TO THE DETRIMENT OF MANY OF OUR MEMBERS.

TO PUT THINGS IN PERSPECTIVE FINANCIALLY, UNITED PARCEL SERVICE, A PROPONENT OF SECTION 211, IS AN EIGHTEEN BILLION DOLLAR A YEAR CARRIER, WHEREAS THE STATE OF WASHINGTON'S BIANNUAL BUDGET IS SIXTEEN BILLION DOLLARS. IN ADDITION, ACCORDING TO THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, ALL CARRIERS IN WASHINGTON INTRASTATE COMMERCE GENERATE A TOTAL OF 607 MILLION DOLLARS ANNUALLY.

THE FACT OF THE MATTER IS, SECTION 211 DOES NOT LEVEL THE PLAYING FIELD AS HAS BEEN CLAIMED, BUT INSTEAD ALLOWS A FEW LARGE INTERSTATE CARRIERS TO CONFISCATE THE PLAYING FIELD.

SECTION 211 AND ATA'S NEW POSITION WHICH WOULD BROADEN FEDERAL PREEMPTION EVEN FURTHER, WILL SIMPLY GIVE LARGE INTERSTATE CARRIERS A TREMENDOUS ADVANTAGE OVER THEIR SMALLER INTRASTATE COMPETITORS. AS WAS SEEN WITH INTERSTATE DEREGULATION ENACTED IN 1980, PREDATORY PRICING WILL MOST

ASSUREDLY TAKE PLACE AS THE LARGE CARRIERS MANEUVER TO INCREASE THEIR MARKET SHARE.

THIS MEANS THAT MANY OF THE LONG TIME FAMILY TRUCKING FIRMS INCLUDING LESS THAN TRUCKLOAD, TRUCKLOAD, DUMP TRUCK, FOREST PRODUCTS, AND AGRICULTURAL CARRIERS WILL BE IN JEOPARDY, AS WILL THE WELL PAYING JOBS THAT THESE COMPANIES HAVE SUPPLIED FOR YEARS.

HIGHWAY SAFETY WILL ALSO BE A LOSER. AS HAS BEEN WITNESSED WITH INTERSTATE DEREGULATION, WHEN RATES ARE DECREASED THROUGH PREDATORY PRICING THERE ARE ONLY TWO AREAS WHERE OPERATING COSTS CAN BE CUT. THE FIRST IS MAINTENANCE - CARRIERS WILL BE FORCED TO RUN THE TIRES A BIT FURTHER, EXTEND THE PERIOD FOR PREVENTIVE MAINTENANCE, AND OPERATE TRUCKS PAST THEIR USEFUL SERVICE LIFE BECAUSE THERE IS NO MONEY TO REPLACE THEM. THE SECOND AREA THAT WILL BE CUT IS COMPENSATION FOR THE DRIVERS. THIS HAS BEEN DONE ON AN INTERSTATE LEVEL TO THE POINT WHERE IT HAS CREATED A DRIVER SHORTAGE RESULTING IN EXTREMELY HIGH DRIVER TURNOVER. IN BOTH INSTANCES THIS WILL MEAN A DETERIORATION IN SAFETY OF HEAVY TRUCKS.

WASHINGTON STATE HAS A TRANSPORTATION SYSTEM THAT WE ARE EXTREMELY PROUD OF. SHIPPERS AND RECEIVERS OF FREIGHT ARE ASSURED OF HAVING THEIR GOODS TRANSPORTED AT A FAIR AND EQUITABLE PRICE, IN A TIMELY AND EFFICIENT MANNER. SMALL AND LARGE SHIPPERS ARE TREATED EQUALLY REGARDLESS OF LOCATION OR SHIPMENT SIZE.

I CANNOT OVERSTATE THE IMPORTANCE OF INTRASTATE REGULATION TO THE MEMBERS OF THE WASHINGTON TRUCKING ASSOCIATIONS. THE FUTURE OF MANY OF OUR MEMBERS IS IN JEOPARDY SHOULD THIS LEGISLATION PASS. I BELIEVE THE OLD ADAGE, "IF IT AIN'T BROKE, DON'T FIX IT" CERTAINLY APPLIES HERE.

I WOULD RESPECTIVELY REQUEST THAT PRIOR TO VOTING ON THIS ISSUE, A FULL AND COMPLETE UNDERSTANDING OF THE SOCIAL AND FINANCIAL IMPACT ON STATES BE UNDERSTOOD.

THANK YOU FOR THE OPPORTUNITY TO APPEAR HERE TODAY. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.

TESTIMONY OF FREDERICK W. SMITH

Chairman and Chief Executive Officer

Federal Express Corporation

Mr. Chairman, and Members of the Subcommittee, I thank you for giving Federal Express Corporation (FedEx) the opportunity to appear before you today to express our strong support for legislation that will improve the efficiency of express package delivery in the United States.

We believe that you will find, after an examination of all aspects of this subject, that the elimination of intrastate economic transportation regulation is an excellent example of a sound public policy decision whose time has come.

Mr. Chairman, if I may borrow from the words of my company's motto, the enactment of this legislation will "*absolutely, positively*" prove to be an immediate benefit both to our national economy and to those individual customers -- businesses large and small, and consumers -- who rely on us to make sure that their important documents and packages are received in a timely fashion.

As you know, Federal Express invented the modern "overnight" express delivery business 21 years ago, in 1973. Our original advertising campaign utilized the slogan "America - You've Got A New Airline." Within ten years, FedEx was generating $1 billion in revenues. Today, I

am proud to say that FedEx domestically serves every address in the United States on an overnight basis and as an international company, serves more than 187 countries around the world. Our revenues for fiscal year 1994 were $8.4 billion. Because Congress in the 70's and 80's saw fit to eliminate government regulations applicable to all cargo air carriers and to interstate surface transportation, FedEx has grown to a company that operates 210 large aircraft, 747's, DC-10's, A300's and 727's and 248 small aircraft serving rural America. We have grown to a company of approximately 100,000 employees operating the world's busiest computer center with 21 million electronic transmissions per day.

Mr. Chairman, and Members of the Subcommittee, there should be no question in anyone's mind that the four keys to our success as the most dynamic entity in our nation's transportation system are, first:

- our people -- our couriers, handlers, sorters, pilots, mechanics and customer service representatives whose dedication is legend not only within our company but also with our customers;

- second, our unstinting commitment to **innovation**;

- third, our dearly held reputation for **outstanding customer service**; and, last but not least,

- our overall commitment to become a "**total transportation system**."

Our employees are very good at what they do. But because of intrastate economic regulations on package delivery, our people historically have been forced to make, **every day**, business decisions that we would not otherwise make. For example, we often picked up packages intended for delivery in the same state, and frequently even in the same city. Rather than taking such items and delivering them in the most efficient manner, we would transport that package to the local FedEx facility, then transport it to the airport, then fly it to one of our centers, sort it, fly it back to the originating airport, take it back to the originating facility, and then drive to its final destination.

Why did we waste time, energy, equipment and manpower in this manner??

Only because, Mr. Chairman, in many states -- forty three (43), to be exact -- we had no choice. We operated as described, or else subjected our rates, routes, and conditions of service to the regulation of those 43 states that then regulated the economics of our operations.

It has been my strong belief for my entire career that in a free-market economy, the **customer**, not some regulatory body, should be the driving factor in the design of our services. Mr. Chairman, since The Airline Deregulation Act of 1980, we have respectfully disagreed that the states could assume jurisdiction over our rates, routes and services.

We took this position because various regulatory commissions within the 43 states believed that they should:

- Decide how and when refunds can be made;
- Prohibit our money back guarantee;

- Prohibit our discount rate structure;
- Require that claims and overcharges be accomplished with a host of paperwork, thus prohibiting our fast, efficient telephone claims systems;
- Regulate the type of contract that we must negotiate with our customers;
- Dictate what records are kept and how they are retained;
- Dictate the contents of our consignment and shipping documents; and
- Regulate our rates -- including attempting to mandate that we raise prices (under penalty of heavy fines, in some cases).

Mr. Chairman, these intrastate regulations if imposed on FedEx would:

- Cause unnecessary delays in the delivery of express packages;
- Depress the growth of jobs;
- Force carriers to spend large amounts of time and money to meet different state rules for obtaining the right to operate in a given state;
- Impose duplicative tariffs;
- Result in the waste of fuel and energy; and
- Hamper the ability of American companies to compete internationally.

The practical implications of these intrastate economic regulations would be almost funny if they weren't so serious. As you are fully aware, an intense legal battle to confirm our position has been on going for years, in Tennessee, California, Indiana, and Texas.

In 1986 FedEx found itself before the California PUC defending its position that the PUC could not regulate our rates, routes or services. The California PUC claimed jurisdiction over those

packages that we moved point to point in California by truck. The Ninth Circuit Court of Appeals found, after carefully reviewing our air and ground operations, that

> "FedEx is exactly the kind of an expedited all-cargo service that Congress specified and the kind of integrated transportation system that was federally desired. Because it is an integrated system it is a hybrid, an air carrier employing trucks. Those trucks do not destroy its status as an air carrier. They are an essential part of the all-cargo air service that FedEx innovatively developed to meet the demands of an increasingly interlinked nation. Congress has freed it from the constrictive grasp of economic regulation by the states."

Freed from antiquated state regulations by Section 105 of the Aviation Act, FedEx can:

- Offer to its customers a money back guarantee;
- Refund customer charges when our customer is not satisfied with service performed;
- Negotiate rates based on costs savings derived from creative customer shipping techniques;
- Pay claims with no required paperwork;
- Agree with each customer on the necessary paperwork and documentation;
- Allow customers sufficient credit flexibility;
- Utilize computers placed in customer's premises which allow totally paperless shipping transactions from pick up through delivery and payment of charges.

California, Texas and Kentucky have, within the last year, understanding the impact of their regulation on the express industry, agreed that previously burdensome state regulations should not apply to transportation activities of express companies.

We believe that Congress should remove all state-based, economic regulations governing rates and services for the intrastate delivery of packages. This would help assure fast, reliable service at more economical rates, with little or no adverse impact on jobs, safety, or the environment.

Interstate Deregulation: An Important Precedent

As you know, Mr. Chairman, in 1980, Congress deregulated **inter**state transportation to the great benefit of the economy, while not adversely affecting safety, jobs or the environment.

We believe that were Congress now to remove **intra**state economic regulations, the result would be an increase in transportation efficiency and competition to the benefit of those consumers and businesses that ship and receive packages -- again, while not harming safety, jobs, or the environment. For example:

- Economic regulatory uniformity among the states would make carriers more productive, thus lowering costs to customers in business and the consumer markets while also creating jobs.

- Removal of economic regulations would speed package delivery overall, by allowing carriers to develop more efficient routes.

- It would enable American carriers to be more competitive by eliminating what are, in effect, "internal trade barriers" imposed by the states.

- European motor carrier transportation has been deregulated substantially. Producers of American goods should benefit from similar cost reductions in their efforts to compete with goods manufactured in Europe.

Mr. Chairman, I think that the results of Congress' previous action in the interstate transportation arena speak for themselves.

The Motor Carrier Act of 1980 has proven successful in promoting **competition** and **efficient** transportation services.

Since 1980, according to the Interstate Commerce Commission, the number of carriers has increased 143%, thereby increasing **competition**.

Also since 1980, according to the Eno Foundation, the cost of shipping freight has fallen from 5.7% of GNP to 4.9% in 1990, which I believe was the single most important factor in the sustained economic growth experienced during the 1980's.

Safety

I wish to reiterate the impact of what has happened, and what one might reasonably expect to happen, with respect to safety, Mr. Chairman, because some opponents of this legislation have suggested that the safety of our transportation system would be in jeopardy were Congress to approve the proposal under consideration today.

On the question of safety, let me state just as clearly as I can:

Federal removal of economic regulations would have absolutely no effect on transportation safety. Only state economic regulations would be curtailed.

Mr. Chairman, Safety in the transportation industry has improved, not worsened, since the deregulation of interstate transportation in the 1980s.

According to the Department of Transportation, the fatal accident rate for large trucks has fallen by one-third since Congress deregulated interstate transportation in 1981.

Careful monitoring of safety data by the U.S. Department of Transportation, the California Public Utilities Commission, and the General Accounting Office reveals that there is no statistically valid correlation between economic regulation of trucking and reduced highway safety.

Important federal laws provide strong assurances of transportation safety. For example:

- The Motor Carrier Safety Assistance Program of 1982 provides for frequent inspections.

- The Motor Carrier Safety Act of 1984 established a uniform set of safety controls and increased enforcement efforts.

- The Commercial Motor Vehicle Safety Act of 1986 provides severe penalties for drug abuse while driving and prevents unsafe drivers from jumping from one state to the next if they lose their license.

In addition each state's enforcement of safety matters will remain unchanged.

Jobs

I also submit, Mr. Chairman, that interstate transportation deregulation has a proven positive impact on employment. This trend will continue under the proposed removal of intrastate economic regulations.

Since interstate shipping was deregulated in 1980, the number of carriers has increased by 143% -- resulting in 1.3 million more jobs, according to the Department of Transportation.

And labor union employment at one company -- our competitor, United Parcel Service -- has nearly tripled since de-regulation of interstate shipping in 1980 (from 70,958 Teamster union member employees in 1980 to 166,920 member emplcyees in 1991).

Service

Deregulation at the interstate level has resulted in an overall expansion of service to Americans everywhere in the nation. Critics of interstate deregulation contended that rural and small communities would suffer a loss of service. However the Department of Transportation's 1990 study shows that between 1979 and 1985 there was no such impact.

Environmental Impact

Mr. Chairman, the elimination of intrastate economic regulations applicable to FedEx allows us to save in excess of 50,000,000 gallons of aviation fuel annually. The positive impact on the nation's environment is obvious.

May I also refer the subcommittee to the work performed in this area by The Volpe National Transportation Systems Center. Their data suggests that intrastate regulations unnecessarily increase the use of fuel for all transportation companies because shipments in a regulated environment are transported longer distances, and empty mileage is significantly increased.

Conclusion

Mr. Chairman and Members of the subcommittee, Federal Express supports any legislation that would allow us to make rational business decisions based on economic principles and the requirements of our customers. Where it makes economic sense to move the package by highway -- always aware of our commitment to have that package delivered on time and safely -- we want to do that. Where it makes sense to fly the package, we will fly it.

We believe that, in today's economic environment, a genuine ability to respond with flexibility to marketplace changes not only makes sense, but is the right thing to do -- for business and for consumers.

Earlier in my testimony, I spoke to you about the steps FedEx has taken to become more efficient, and to meet the demands of a changing marketplace. Well, Mr. Chairman and

Members of the subcommittee, Federal Express must indeed be the very model of efficiency in order to compete successfully while offering our customer the services they require. This dynamic express industry is the primary logistics arm for the most important industries and services in the United States - the manufacturers of computers and medicines, including radioisotopes used daily for diagnosis, the providers of health care, and many others. Our industry, while some may not have this perception, is not merely a transporter of goods and documents, but is the life line in a true sense for all of us - when a critical shipment must be picked up and delivered on an immediate basis.

The United States has throughout its history been the world's leader in transportation and logistics. It is critical that we remain so. Europe has now chosen to completely free its carriers from surface regulation, can we afford **not** to allow similar efficiencies in the U.S. marketplace?

Mr. Chairman, this concludes my testimony.

I urge the Subcommittee to approve this important legislation.

Thank you for your time. I will now be pleased to answer any questions you may have.

****

ADDITIONS TO THE RECORD

BT Brown Transfer
Demand Responsive Service
P.O. Box 42387
Portland, OR 97242-0387
(503) 234-2660
1-800-321-2660
Fax (503) 232-9402

Oregon Authority
Local Cartage
& Statewide
10,000 lbs.
& over

July 20, 1994

House Public Works
Subcommittee on Surface Transportation
B-376 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Chairman Rahall and Honorable Committee Members,

My company, like thousands of others in Oregon and elsewhere, are deeply concerned about Section 211 of the Senate version of the Airport Appropriations Act of 1994.

My company is a small one that provides very specific, high-quality services to our customers. We employ just seven people, operate five tractors and utilize 13 trailers. We're typical of many of the companies that are currently threatened by Section 211 of the Airport Funding Bill.

Brown Transfer provides services into numerous points in Oregon where larger companies won't go, simply because it's not profitable enough for them. Often times, our payload is one-way and we return empty. Many of our larger competitors simply refuse to provide the service that we do.

I am deeply concerned about the future of not only of my company, but of the outer-lying communities that rely on us. If intrastate trucking operations in Oregon are deregulated, all of my customers will no longer have any assurance of receiving safe, dependable delivery services.

The result of forced intrastate deregulation will be thousands of communities around the country left stranded without any freight service -- or, at best, they'll be held hostage to carriers who'll charge them excessive fees for delivery their essential goods.

Plus, numerous truckers who'll try to offer the lowest price in town will grossly undercut each other and end up neglecting essential maintenance and repairs for their vehicles. Innocent motorists will become their victims as these abused, unmaintained trucks break up all over the highway.

I urge you to consider the consequences of the intrastate deregulation provisions of Section 211 and ask you to please not perpetrate this devastation on Oregon's rural residents.

Please reject this proposal for federal deregulation of intrastate trucking and allow each state to determine for itself the best course of action on this matter.

Sincerely,

Mark Brown
President
Brown Transfer

8101 N.E. 14TH PLACE • PORTLAND, OR 97211

July 20, 1994

House Public Works & Transportation
Subcommittee on Surface Transportation
B-376 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Rahall,

As you and your fellow committee members deliberate the intrastate deregulation provisions of the Aviation Appropriations Act of 1994, please consider the impact that Section 211 will have on the thousands of American trucking companies like mine -- many of whom are located within your own state.

PRO Truck Lines is a smaller-sized local carrier with three terminals in Portland and Southwest Washington. We operate 159 pieces of equipment and provide good, family-wage jobs for 110 employees. We service rural Cascade Mountain towns and ski resorts located well outside of the Portland metropolitan center.

We also have a local cartage operation in the Seattle area, which includes the hard-to-reach, remote islands of the Puget Sound. In addition, we offer less-than-truckload and truckload services throughout Western Oregon and Washington.

My colleagues and I already know all to well the effects of deregulation: We've experienced it on the interstate level.

If you're a major shipper who moves goods strictly along profitable freight corridors, deregulation isn't such a terrible threat. But for those small to medium-size companies who are the foundation of our nation's economy, intrastate deregulation will force many of them to close their doors because they will no longer be able to afford to get their goods to market.

Section 211 of the Airport Funding Bill isn't a debate about the merits of regulation or deregulation. Rather, it's a sweetheart deal for a few companies who will benefit and a death sentence for thousands of small companies like mine.

Our nation's 50 states, with their varying transportation needs, should continue to determine for themselves how best to regulate -- or not regulate -- their trucking industries.

For the sake of America's small businesses and small towns, please reject the intrastate deregulation proposals contained within Section 211 of the Aviation Appropriations Act of 1994.

The residents of my state -- and your state -- will be grateful. The bottomline is: Our livelihoods depend on it.

Sincerely,

Ron Brown, President
PRO Truck Lines

ALFRED O. PANEK
SECRETARY-TREASURER

General Teamsters
AUTO TRUCK DRIVERS AND HELPERS
Affiliated with the I B of T
Local No. 162

ROGER J. NIEDERMEYER
PRESIDENT

TEAMSTER BLDG., 1850 N.E. 162ND AVE. PORTLAND, OREGON 97230-5697 PHONE 257-0162 FAX 251-2330

July 14, 1994

I am William Bussey and I work for Teamsters Local Union No. 162 in Portland, Oregon. I presently represent over 1100 people with 24 employers at over 33 locations, the biggest unit being 700 people.

Previous to this job I drove for 23 years in the freight and grocery industries. I have logged over 2 million miles.

I am representing Joint Council of Teamsters No. 37, as well as my own Local Union, here at this hearing. I find myself in a different position than normal. We are in full agreement with management.

In my opinion, the passage of SB 1491 would do many things to the industry, and they are all negative. This deregulation will de-stabilize the market place. It would pit the larger carriers against smaller, regional operators. Larger carriers would drive down wages and the smaller carriers would be driven out of business. Many of these smaller operators employ our members. I have listed some of them as follows:

Company	Approx. Number Members	State
Risberg Truck Lines	120	Oregon
Tillamook - Portland	65	Oregon
Silver Eagle	700	OR/WA/ID
TNT United	60	Oregon
TNT Reddaway	400	OR/WA
Arrow Transportation	150	OR/WA
Total	1,495	

Many of the rural, out-of-the-way areas may not get adequate shipping and delivery of essential goods and services. Most of these areas are outside profitable freight corridors and they will lose cost-effective delivery of essential goods. Because of this, it will most certainly create a financial hardship on those people. Many of these communities are already hardhit, and they are economically depressed.

Fly-by-night trucking operations will spring up everywhere. This will cause the under-cutting of competition; and maintenance of the equipment and safety will be in jeopardy. It is a well known fact that the companies in the weakest financial condition have the highest accident rates. Additionally, those border-line companies are more inclined to speed and violate hours of service rules in order to stay financially afloat.

I believe that passage of this bill, which will pre-empt states' rights to regulate intrastate trucking operations, will ruin currently viable small trucking companies, thowing many thousands of Americans out of work.

I urge you to defeat SB 1491!

Respectfully submitted,

William T. Bussey

Statement on regulation vs. deregulation
TP Freight Lines and L.C. Hall's Truck Lines.
July 20, 1994

My name is Buck Colleknon and I am president of TP Freight Lines and L.C. Hall's Truck Lines. These two family businesses provide stable, family-wage jobs to about 110 employees. We provide LTL, truckload and distribution services in Northwest Oregon and Southwest Washington. Our service area is heavily rural and comprised primarily of small towns.

More than 75 percent of our customers are small businesses in these areas. Their shipments generally range from two pounds to 1,000 pounds. We deliver overnight to all of these areas at no additional charge. Without question, deregulation of trucking will adversely affect these customers because their volume is not large enough to demand the type of discounts, rates and service that large shippers receive.

Oregon's current regulated rate structure translates into fair rates for all customers. A small business in a rural area does not pay appreciably higher rates than a large customer in an urban area pays for the same service. Yet there is still flexibility within the current state regulations on commodity rates for carriers to work with large customers to provide fair, equitable rates based on volume.

During the past 12 years, base interstate rates have increased more than 100 percent while intrastate rates have grown by less than 40 percent. This is a direct result of rampant discounting of interstate rates. In fact, in order for the current interstate and intrastate rates to be equal, interstate rates must be discounted by approximately 30 percent.

Price discrimination on interstate rates is common. Because of their small size, many rural customers can not get interstate discounts from large carriers. These customers pay 50 to 70 percent higher rates than many large shippers. When they do get discounts, which isn't that often, the most they'll get is about 45 percent. At the same time, larger shippers routinely demand and receive 65 to 70 percent discounts off interstate rates. Under this system, the little guy ends up subsidizing the big guy. For example, a shipment that costs a large customer $100 might cost a small coastal customer $150 to $170. Yet these smaller customers have less volume and lower margins with which to recover their higher costs.

This puts small Oregon businesses at a competitive disadvantage. With deregulation, this will occur often.

The irony of all this is that even with large discounts, some interstate rates within our service area are higher than intrastate commodity rates. For

example, a shipment of tires (on another freight line) discounted at 55 percent off interstate rates cost a coastal business 10 percent more for a 2,000 pound shipment than if we had carried the freight at Oregon commodity rates.

Concurrent with deregulation of rates and authority, the federal government has drastically increased safety regulations. All carriers must now provide extensive safety training in hazardous materials and other federal requirements at the same time as their per unit income is declining because of discounting. There are increasing state and federal vehicle inspection requirements which require more money for equipment maintenance. A lower per unit income means more units must be hauled at a higher cost to keep the same gross revenue level. Again, intrastate deregulation would exacerbate this problem. As income falls, training and equipment maintenance suffers. Dozens of failing companies have proved this.

One need only to look at the deregulated bus routes in Oregon to see a pattern which, we believe, trucking would follow with intrastate deregulation. Tillamook County where we are based can not maintain any bus service -- even with government subsidies. Other parts of the state, such as Eastern Oregon, provide bus service only with government support.

With intrastate deregulation, small shippers in rural areas would become prey to the whims of large carriers. Service to towns such as Nehalem, Waldport, Vernonia, Long Beach, WA and other small towns would occur only when a carrier wanted to travel there. And probably, because of the small quantities and the distances involved, the rates would be much higher than for deliveries to metropolitan centers such as Portland.

Many small businesses in small towns, because of their income levels, rely on regular, daily shipments to survive. They do not have the resources to order large amounts of goods that would entice a carrier to deliver them. Their only recourse would be to travel to large population areas such as Portland to pick up the goods themselves. This would significantly increase their costs.

Because TP Freight Lines works with many national and regional interline carriers, we can consolidate shipments to smaller towns. This conserves time, money and natural resources without adding to traffic congestion by large amounts. We think regulation of the trucking industry in Oregon works to the customer's advantage.

In closing, the experience in Oregon -- like other states with large rural areas and many small towns -- proves that intrastate regulation of the trucking industry benefits small businesses and our economy.

Statement Of
Lawrence J. Day
Vice-President
Messenger Courier Association of the Americas

Before The
Subcommittee On Surface Transportation
House Committee On Public Works and Transportation

July 20, 1994

Mr. Chairman and Members of the Subcommittee:

I am pleased to represent the Messenger Courier Association of the Americas (MCAA) which has its national headquarters at 1650 Tysons Boulevard, McLean, VA. The MCAA is a national trade association representing messenger/couriers and specialized package delivery firms. There are over 8000 such firms in the United States. I am here today to represent their interests by testifying in opposition to Section 211 contained in the Senate version of H.R. 2739.

This bill purports to protect and serve the interests of business and the general public by removing intrastate entry and rate restrictions on certain "intermodal all-cargo air carriers", and any other carrier affiliated with such a carrier. We understand that the term "affiliated" has been defined as any "other carrier which has authority to provide transportation" and which utilizes an intermodal all-cargo air carrier at least 15,000 times a year.

To understand why this amendment garnered such support in the Senate we must consider the specific history of "intermodal all-air carrier deregulation". Federal Express, and United Parcel Service are intermodal air carriers, but not all of their shipments move via air. In fact, a significant number never leave the ground; they are transported strictly by truck. As you certainly know, a number of states, 41 to be exact, regulate to one degree or another, intrastate transportation. In June of 1992, in what many people believe to be a rather strange court decision, the 9th U.S. Circuit Court of Appeals decreed that California could not regulate Federal Express' intrastate trucking operations because the company is a federally certified air carrier. The U.S. Supreme Court let stand, without comment, the decision.

Effectively this completely deregulated Federal Express' entry and rate filings in the nine states governed by the circuit court. Christine Richards, a spokeswoman for Federal Express, applauded the decision which ended a bitter five year battle with the California Public Utilities Commission.

Not nearly as pleased with the court's decision was John Flick, a United Parcel Service spokesman. He stated, and I quote, "We are extremely disappointed. It creates a very unfair competitive situation in the package express market. One company has the freedom to respond while UPS remains highly regulated."

United Parcel Service, as well as many other large carriers, vigorously opposed Federal Express' position for years. They eloquently, forcefully and even passionately argued that it was totally unfair to deregulate one carrier and not another. Unfortunately, the merits of their arguments were lost in the tapestry of obfuscation woven by Federal's lawyers.

Subscribing to the old adage "If you can't beat 'em, join 'em", UPS, Airborne, and a number of other formally staunch opponents of Federal's position took a 180 degree turn. Today it seems that they feel it IS morally acceptable to deregulate a certain few carriers and not others. If politics makes strange bedfellows, deregulation can make the lion lay down with the lamb, and it can breath new life into deregulation legislation.

Deregulation bills flourished - any number were thrown into the hopper. On April 2, 1992 we appeared before this very committee in opposition to H.R. 3221. Our position hasn't changed since that time, we are firmly opposed to any deregulation attempt which favors a few select carriers. We agree with the International Brotherhood of Teamsters' position that this legislation "would create near monopolies for a handful of companies at the expense of small and medium-sized carriers and their employees." Approximately 6400 messenger/courier firms will be adversely effected by the Senate version of this legislation. Tens of thousands of jobs are in jeopardy. Why? So that a select few mega-corporations can add another quarter point to their bottom line.

John Flick's (UPS) statement that this form of deregulation ".... creates a very unfair competitive situation in the package express market" was true in 1992 and it is true today. Section 211 is discriminatory and predatory and should be stripped from S-1491 in conference. If deregulation is a future reality, then let it apply to every carrier and not for the benefit of just a few. The issue of deregulation is far to important, the ramifications far to great to be hung on the coattails of H.R. 2739 - an aviation funding bill and not a trucking bill. We urge you to hold public hearings on the entire issue of deregulation.

I would be happy to answer any questions you may have.

PFMI INSTITUTE

NPTC

Private Carrier

NATIONAL PRIVATE TRUCK COUNCIL

66 Canal Center Plaza, Suite 600, Alexandria, VA 22314 • Phone 703-683-1300 • Fax 703-683-1217

Statement of

Earl B. Eisenhart

Vice President,
Policy and Government Affairs

National Private Truck Council

on

Trucking Regulation Reform

before the

Subcommittee on Surface Transportation

of the House Public Works Committee

Washington, D.C.

July 20, 1994

STATEMENT OF
THE NATIONAL PRIVATE TRUCK COUNCIL
ON
TRUCKING REGULATION REFORM

INTRODUCTION OF NPTC

The National Private Truck Council (NPTC) is the national organization representing companies that operate truck fleets in support of their business activities, whether manufacturing, processing, distribution, warehousing, retail or service. These fleets are in business to serve their companies' transportation and logistics needs. They are both shippers and carriers. They are not generally in the business of providing for-hire transportation. (However, based on information contained in the Department of Transportation Motor Carrier Information File, approximately 17 percent of private truck fleets hold operating authority for part or all of their fleet operations, which is generally used to secure freight "backhauls.")

Private, or corporate, trucking is the principal transportation arm of American business and is in engaged in by businesses of virtually all kinds and sizes. According to a recent study, private trucking accounts for 56 percent of commercial truck tonnage, and 80 percent of all commercial trucks are private fleet vehicles. ("America's Private Carriers, Who Are These Guys?" Transportation Technical Services, 1993)

While private carriage is utilized for virtually all types of trucking operations, activity is concentrated in local and regional areas, especially deliveries of building products, food, grocery and drug products, and chemical and energy products. Ours are the truck fleets that bring food, fuel, and consumer products to America's doorsteps.

NPTC represents the entire range of private truck fleet operators. Our members include large fleets operated by Fortune 500 companies as well as the small fleets of local businesses. They operate virtually every type of equipment, from tractor-trailer combinations using tank trailers or 48- or 53- foot long trailers, to straight trucks used in local delivery operations by bakeries and dairies.

PRIVATE FLEET INTEREST AND INVOLVEMENT IN REGULATORY REFORM

As shippers, private carriers recognize that state economic regulation of trucking stifles competition among for-hire truckers and artificially drives up freight rates. We know that it also presents barriers to efficient use of national distribution systems.

In an increasingly competitive marketplace, corporations need to contain transportation costs as much as possible. This effort is seriously compromised by state economic regulations of both for-hire and private carriage which artificially drive up freight rates and prevent fleet managers from making the most efficient use of their vehicles. This results in unnecessary costs which are reflected in consumer

prices. This makes American business less competitive both within the U.S. and abroad. For this reason, NPTC supports full economic deregulation of trucking. NPTC also has been an advocate for relief from state economic regulations which directly limit private carrier operations. We want to stress this point because we are often asked why it is that non-transportation companies need relief from state economic regulation of transportation: Don't these regulations only cover for-hire transportation? The answer is: No, state trucking regulations do not only cover for-hire transportation. Most states have various provisions restricting non-transportation companies from using their private truck fleets to their best advantage. For example, states restrict companies from using their fleets to haul products for other companies belonging to the same corporate family, restrict private fleets from leasing vehicles and drivers to other transporters, restrict private fleets from leasing drivers and vehicles from the same source, and in some instances restrict the ability of private fleets to obtain operating authority. These restrictions mean that private fleet managers are forced to run trucks empty because they are prevented from securing "backhauls," and time and money are lost due to the need to deal with needless paperwork and bureaucracy. (Additional information is contained in Appendix A.)

State economic regulation of both for-hire and private trucking kills productivity, adds to the cost of consumer goods and services, and requires more trucks on the roads than is necessary.

NPTC has long been involved in the effort to achieve regulatory reform of trucking. Since 1980, when Congress reformed trucking regulation at the federal level, the private fleet community has been active in efforts to bring uniformity to state regulations as well. NPTC, as well as its predecessor organizations, the Private Truck Council of America and National Private Trucking Association, has worked to eliminate the many restrictive, burdensome, and anti-free market state trucking regulations which cost businesses and consumers billions of dollars a year.

In recent years, NPTC has actively supported several bills to bring about regulatory reform. Of most specific interest to private carriers is H.R. 1077, the Private Motor Carrier Equity Act introduced by Congressman Pete Geren. This legislation directly seeks to remedy the problems of private truck fleets, by eliminating those state regulations which place the most onerous restrictions on private carriage. Mr. Geren has been a tireless advocate for the private fleet community and we are most grateful for his support.

Bills have also been introduced in recent years by Representatives Hastert, Packard and Emerson. These gentlemen have long been strong advocates of trucking reform and also deserve special praise for their vigorous efforts on behalf of this issue.

THERE IS A COMPELLING NEED FOR REFORM

Prior to 1978, a manufacturer could transport only its own goods in its fleet of trucks. This policy decision forced millions of tractor-trailers to make deliveries and then return to their facilities empty. The reforms which the Interstate Commerce Commission and Congress put in place, culminating in the Motor Carrier Act of 1980, served to overturn many of the discriminatory federal policies which had plagued private truck fleets and others for nearly 50 years. These reforms allowed private fleets operating interstate to reduce costly and inefficient "dead-heading." (return trips with empty trailers) The current problems exist because of the refusal of many states to follow the lead of Congress in opening up their own transportation markets. The failure of these states to conform to the federal system results in a legal anomaly and has a serious impact on for-hire carriers, private truck fleets, their parent companies, consumers, and the overall economy.

There is a compelling need to finally bring about reform of state regulation of intrastate trucking operations. State regulation of entry, rates, routes, and services limits competition, inflates trucking rates, and increases the costs of doing business. Freight shippers wind up paying artificially high rates in many states, and sometimes even find it necessary to move manufacturing and distribution facilities across state lines just to avoid the increased costs of intrastate transportation regulations.

In addition, these regulations hinder the efficient flow of inter- as well as intrastate commerce: In the United States we have a national economy. Products are marketed, distributed, and sold on a national basis. Manufacturers have national distribution networks to serve the needs of this economy. Motor carriage, and especially private motor carriage, provides the principal transportation support for these national distribution networks. It is contrary to the purposes of a national economy to compel truck operators to segregate their operations into inter- and intrastate operations, with the resulting losses in efficiency and increases in cost.

Finally, state economic regulation of private trucking means that more trucks are on the road than is necessary to meet business demand. This results in more air pollution, more traffic congestion in urban areas and additional safety problems. Reform of state trucking regulation not only makes good economic policy, but good environmental, transportation, and safety policy as well.

NPTC SUPPORTS BROAD RELIEF

NPTC supports broad regulatory relief for shippers and motor carriers alike. Our first preference is for trucking reform that would eliminate state regulation of entry, rates, routes, and services (exclusive of safety and insurance requirements) across the board for private and for-hire carriers. This approach would provide the greatest benefit to the largest number of NPTC members. Barring such broad relief, NPTC

seeks relief from those state restrictions which are specifically directed to private carriage.

NPTC POSITION ON SECTION 211

For these reasons, NPTC is supportive of the thrust of Section 211 of S. 1491 of the Federal Aviation Administration Authorization Act of 1994, but believes its provisions should be expanded to provide relief to all truck operators. Section 211 as passed by the Senate, would grant relief to a significant but limited number of truck operators, and would thereby create "winners and losers" among companies which operate truck fleets.

With regard to private carriage, there is little doubt that some private fleets, particularly those affiliated with larger companies, would qualify for relief under the provisions of Section 211. We applaud this movement toward regulatory relief. However, many smaller companies would be left out.

Some proponents of Section 211 have said that companies can "easily" come within the provisions of Section 211 by either: 1) holding themselves out as indirect air cargo carriers; 2) affiliating with an air carrier or air freight forwarder; 3) utilizing 15,000 air-surface shipments annually; or 4) affiliating with a company utilizing 15,000 air-surface shipments annually. None of these is a serious option for the vast

majority of private truck fleets.

First, it needs to be understood that the vast majority of private carriers are not "transportation companies" as that term is generally understood and interpreted. They are manufacturers, wholesalers, retailers, grocery stores, hardware stores, lumber yards, fuel oil distributors, bakeries, florists, etc. They use trucks to transport only their own products. Based on information contained in the DOT Motor Carrier Information File, less than 17 percent of private carriers have ICC or state authority to act as transportation companies.

The relief provisions contained in Section 211 are clearly directed to transportation companies and not private carriers, which are overwhelmingly "non-transportation companies." Yet, private carriers haul most of the truck freight in the U.S. They should get relief as well.

INDIRECT AIR CARRIER

In order to "qualify" as an indirect air carrier, a company would need to provide a service that uses an air carrier and have a stake in the service that puts the company at "financial risk" for the performance of the transaction. The company would also need to establish a written security program under 14 CFR PART 109 and have that program approved by the FAA. This is just not a serious option for

most construction companies, local beverage distributors, dairies, newspapers, groceries, drug stores, coal companies, etc. They obviously do not and cannot use air carriers in their business operations nor do they have any reason or rationale for doing so. These types of companies make up the bulk of private carriage.

AFFILIATION WITH AN AIR CARRIER

A company which is "affiliated" with an air carrier may qualify for relief under Section 211. However, Section 211 also provides that a company first must have "authority to provide transportation," if it is to be considered to have affiliated status. As stated above, more than 83 percent of private carriers do not possess such authority. Even if they did, most would be in no position to affiliate with an air carrier.

15,000 AIR SHIPMENTS

Once again, in order to qualify for relief, a company first must have authority to provide transportation. Based on information contained in the DOT Carrier Information File, this automatically rules out approximately 83 percent of 150,000 total private fleets (124,000 companies). Most of those who do hold authority (about 26,000) would still not meet the threshold of 15,000 air shipments. Our best estimate is that no more than 25 percent of these 26,000 would meet this threshold. This means that only about 6,000 private fleets would meet both tests necessary to qualify for relief, while 144,000 would not. In other words, more than 95 percent

would get no relief.

AFFILIATION WITH A COMPANY UTILIZING 15,000 OR MORE AIR SHIPMENTS

In order to qualify for relief by virtue of affiliation with a company utilizing 15,000 air shipments, a company would first need transportation operating authority and second, have the appropriate corporate affiliation. For the reasons stated above, more than 95 percent of private fleets would not meet these tests.

Section 211 does the right thing, but it does it for only some, mostly large, truck operators. If this medicine is good for some, it's good for all. By the same token, we want to make clear that NPTC would be opposed to any effort to compromise away from the relief which is provided in Section 211 by limiting its application to even fewer operators. In other words, Section 211 should be the baseline for trucking reform. We need to make it better by including all truck operators, not make it worse by eliminating any who are now covered.

Legislation should be passed by Congress which provides relief to all private and for-hire operators.

SUMMARY AND CONCLUSION

NPTC's first preference is enactment of broad regulatory reform providing relief for all carriers, for-hire and private, from state economic regulation of trucking. Barring that, we seek limited relief for private carriage from those state restrictions which directly target private fleet operations. We are supportive of the thrust of Section 211 of the Senate's Airport Improvement Bill but believe it should be expanded to provide relief to all truck operators. We oppose any efforts to limit the scope or applicability of Section 211. Congress should pass legislation broadening the scope of relief provided in Section 211.

(Appendix A)

WE'RE ALREADY TWELVE YEARS LATE: CONGRESS SHOULD ACT NOW TO RELIEVE PRIVATE TRUCKING OPERATIONS OF UNNECESSARY INTRASTATE REGULATION

Background: Private truck fleet operators are companies that operate trucks to service their own business activities, whether these are manufacturing, processing, retail, warehousing, distribution, or service. For example, Frito-Lay, Pet Inc., and Walgreen Company have private truck fleets which haul their own products and sometimes transport raw materials from their suppliers. This transportation is generally not subject to economic regulation by the Interstate Commerce Commission, pursuant to the trucking deregulation law passed in 1980. The 1980 deregulation law recognized the need to lift the complex web of antiquated and burdensome interstate regulations that had been imposed on the trucking industry over the past several decades. It did not, however, relieve the trucking industry of the burdensome regulation of intrastate activities.

Despite the fact most private carriers act in an interstate capacity, their intrastate activities remain subject to numerous, unnecessary regulations. For example, many states restrict private carriers from hauling goods for parent subsidiary and affiliate companies. In addition, many states prohibit private carriers from using leased trucks and drivers from the same source.

Legislation: H.R. 1077 legislation introduced by Representative Pete Geren (D-TX) would lift many of these outdated and unnecessary intrastate regulations on private carriers. The legislation would not affect intrastate regulation of for-hire common or contract carriers. In addition, the legislation recognizes the need for continued state regulation of safety and insurance and does not alter current law in those areas. Specifically, with regard to intrastate operations, the legislation would allow private carriers to:

- **Haul goods for related companies (parents, subsidiaries or affiliates) for compensation.**

  Currently, 35 states prohibit a company such as Frito-Lay, a wholly-owned subsidiary of PepsiCo, Inc., from hauling freight for Pepsi-Cola (or any other subsidiaries of PepsiCo) for compensation.

- **Use trucks and drivers leased from a single source (leasing company or other carrier).**

  Most states prohibit a company, such as Pet, Inc., from leasing trucks and drivers from the same source to haul Pet products. Often it is more cost effective for Pet to lease vehicles and drivers from a single source, such as Ryder, rather than leasing vehicles from one lessor and drivers from another.

- **Lease their own trucks and drivers to other carriers.**

  Most states prohibit a private carrier from leasing its truck and driver to a common carrier. For example, a common carrier may have accepted a load from a shipper. If the common carrier does not have one of its trucks positioned to pick up the load, it is more efficient for the common carrier to lease an empty truck from a private carrier and split the revenue for the trip.

- **Set up transportation subsidiaries that could haul for the parent or related companies and other shippers under the same rules as common and contract carriers.**

  Some states prohibit a company from establishing a wholly-owned transportation subsidiary to: (1) haul goods for the parent company (as compensated intercorporate hauling); and (2) haul freight for other companies as a for-hire common or contract carrier to offset the costs of transporting its own goods. This is because some states do not allow a non-transportation primary business to obtain common or contract authority to operate in that state.

- **Use vehicles and personnel provided by another carrier, such as Ryder, to serve exclusively as a company's private fleet (dedicated contract carriage service).**

  Most states prohibit or restrict companies from providing dedicated contract carriage service for intrastate shipments. For example, in order to concentrate on its primary business, a company, such as Frigidaire Company, will turn its private truck fleet operations over to Ryder. Ryder assigns trucks and drivers for the exclusive use of Frigidaire and assigns management and safety personnel to work solely for Frigidaire at Frigidaire's distribution facilities. As a result, Frigidaire's delivery truck is owned by Ryder and driven by Ryder employees, even though the truck says "Frigidaire" on its side.

H.R.* 1077 *Means Fewer Empty Truck Miles -- This Will Produce Numerous Economic and Environmental Benefits:

- *Lower Cost of Goods to Consumers*
- More Efficient Trucking Operations
- Fewer Trucks on the Road
- Less Pollution
- Better Fuel Consumption

SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE HOUSE COMMITTEE ON WORKS AND TRANSPORTATION

HEARING ON INTERSTATE DEREGULATION OF THE TRUCKING INDUSTRY

JULY 20, 1994

STATEMENT SUBMITTED FOR THE RECORD BY:

FRITO-LAY, INC.
P.O. BOX 660634
DALLAS, TEXAS 75266

Frito-Lay, Inc.

Frito-Lay, Inc., the nation's leading manufacturer and distributor of quality snack food products, including Lay's and Ruffles brand potato chips, Doritos brand tortilla chips and Fritos brand corn chips, has long been a strong advocate of completing the economic deregulation of the motor carrier industry, which began with the passage of the Motor Carrier Act of 1980. An operating division of PepsiCo, Inc., Frito-Lay employs 29,000 people nationwide. We have 40 manufacturing plants located in 25 states, and sales offices and distribution centers are located in all 50 states.

Our total fleet of trucks is the third largest private carrier fleet in the country. Last year the total fleet traveled in excess of 231 million miles and consumed nearly 25 million gallons of fuel. More than 1,100 over-the-road drivers and 12,000 route sales personnel deliver products from plants and distribution centers directly to the retail outlets. Our distribution fleet, which includes 850 tractors and over 2,100 trailers, travels more than 76 million miles annually. It is this fleet that is directly affected by the present patchwork of intrastate trucking laws and regulations.

Frito-Lay strongly supports Section 211 of S. 1491, the Federal Aviation Administration Act of 1993, and all other efforts aimed at completing the economic deregulation of the trucking industry. Changes brought about by the 1980 Motor Carrier Act contribute approximately $25 billion annually to the nation's economy in the form of lower prices and more efficient use of the motor carrier industry's assets. However, a lack of uniformity in state regulation of interstate carriers continues to hinder the optimization of carriers' assets. At Frito-Lay, the regulation of intrastate trucking adds as much as $8 million of operating costs annually. Included in this additional cost are the intrastate rates that average 40% higher than comparable interstate rates. Adopting or broadening the reforms contained in Section 211 of S. 1491 would allow the shipment of raw materials and finished goods to move on an intrastate basis at more competitive rates. Also, the ability to utilize empty backhaul miles, which constitute about 25% of Frito-Lay's total over-the-road mileage, would have a positive effect on fuel conservation and lessen traffic congestion on the highways.

P.O. BOX 660634 • Dallas, Texas 75266-0634 • (214) 334-7000

Statement submitted for the record by Frito-Lay, Inc.

Thirty-one states prohibit compensated inter-corporate hauling between wholly-owned subsidiaries of a parent corporate. Elimination of this intrastate barrier would allow corporations to fully maximize their fleet operations, thus reducing operating costs, eliminating redundant assets, reducing miles traveled and conserving fuel.

The elimination of restrictions on entry and rate regulation of intrastate trucking would broaden competition and increase productivity. Highway safety would be enhanced by the reduction of miles that truck fleets currently operate. States still must enforce the federal motor carrier safety regulations as their minimum, and many states have adopted even more stringent regulations which we support.

In summary, Frito-Lay believes the motor carrier regulatory system has outlived its economic usefulness. It is time to do away with all intrastate economic regulations for all intrastate motor carriers. By adopting Section 211 of S. 1491, our national truck transportation system will become more competitive, more efficient and more economical, and safety will not be compromised. This legislation is vital to a healthy business climate in today's global economy.

Refer any questions regarding this statement to Mary Staples, 214/334-2125.

MMS084

GEORGIA MOTOR TRUCKING ASSOCIATION
Courier Division

500 Piedmont Ave., NE
Atlanta, Georgia 30308
404-876-4313
Fax: 404-874-9765

July 11, 1994

The Honorable Nick Rahall
House Public Works Committee
House Surface Transportation Subcommittee,
Room B-387, RBOH
Washington , D.C. 20515

Dear Congressman Rahall:

Please accept this as my notice of my intent to appear at the House Public Works Committee Hearing scheduled for 10:00 A.M., July 20, 1994, on Bill S. 1491, I have been informed that this agenda has been closed, alternatively, I request that this testimony be entered into the record.

As Chairman of the Courier Division of the Georgia Motor Truck Association, I represent the interests of the intrastate Courier Industry in Georgia.

It is our position that Amendment 211 to this bill will wreak serious and irrevocable damage to thousands of mid-size, and small businesses, causing unemployment for even more thousands of these businesses' employees, to the ultimate benefit of a few major motor carriers. Further, that the shipping public will likewise suffer substantial economic hardship due to increased rates and decreased service. In addition, the public at large will be subjected to unsafe acts and equipment on the roadway, as well as being at the mercy of financially unfit motor carriers, avoiding their liability responsibilities.

The weak and belated attempt by the American Trucking Association to add language to this bill that purports to afford protection to small carriers is an attempt to mollify their constituency, in the face of a groundswell of member opposition to the ATA's position of "no position" on this very important issue.

Finally, we request that this tacked-on Amendment be deleted until a full study of the impact on the Motor Carrier Industry be undertaken, and consideration be given to all participants regardless of size.

Respectfully;

Byrd B. Gossett
Chairman, Courier Division, G.M.T.A.

cc: Ed Crowell
Managing Director, G.M.T.A.

STATEMENT

OF

JOSEPH M. HARRISON, PRESIDENT

AMERICAN MOVERS CONFERENCE

ON

SECTION 211 of S. 1491

THE FEDERAL AVIATION AUTHORIZATION ACT

OF 1994

JULY 20, 1994

WASHINGTON, DC

AMC

AMERICAN MOVERS CONFERENCE

The American Movers Conference (AMC) is the largest national trade association representing household goods movers. With approximately 3,000 members nationwide, AMC represents the entire spectrum of the industry including national van lines, their affiliated agents and independent regional and national carriers. AMC is an affiliate of the American Trucking Associations. AMC functions include representation and promotion of the interests of the moving industry before federal and state legislative and regulatory bodies.

AMC opposes any attempt to preempt state regulation of household goods movers by the federal government. State regulation is an integral part of the household goods moving system. AMC does not believe Congress should step in and eliminate all regulatory options for the states.

As originally drafted, Section 211 of S. 1491 was so broad that it would have allowed a class of motor carriers to transport anything without economic regulation, whether it was small packages and parcels, household goods or any other commodity. AMC believes that the regulation of household goods movers should not be left to chance. As Congress recognized in the Household Goods Transportation Act of 1980, the transporters of household goods have special responsibilities to individual shippers.

The fact that the household moving sector does business with individual shippers also sets it apart from the rest of the trucking industry. These shippers usually move only once or twice in their lives and, consequently, lack a thorough understanding of the industry and sufficient clout to negotiate with it. Their situation is made more vulnerable by the fact that the moves involve all of their personal possessions, which often are of a fragile nature. H. Rep. No. 96-1372, 96th Cong., 2nd Sess. 2, reprinted in (1980) U.S. Code, Cong. & Admin. News, 4271, 4272.

. . . the committee recognizes that many users of household goods carriers are ordinary consumers unfamiliar with how the industry works and without the economic leverage of commercial shippers. These persons tend to be more vulnerable than other shippers and, hence, in need of protections that are not necessary for other motor carrier shippers. Ibid., at 4275.

The combination of state and federal regulations achieve that goal while allowing movers to compete in a stable economic environment. At AMC's urging the Senate agreed to amend Section 211 to allow for the continued intrastate regulation of household goods movers. However, it is a matter of serious concern to the many small, intrastate movers who are AMC members that state regulatory bodies may opt out of all state trucking regulation, including moving, after passage of S. 1491. AMC does not doubt that passage of Section 211 will lead to complete deregulation of most, if not all,

intrastate freight carriers. The minimal regulations that may be maintained will be meaningless without state rate and entry authority. It would be pure conjecture to assume that the states will continue regulation of a segment of the trucking industry (e.g. movers) without the authority to reasonably regulate the balance of the industry.

For an example of what occurs with wholesale deregulation of the moving industry, one must look no further than the State of Florida. Florida deregulated the intrastate trucking industry, including household goods transportation in 1980 and the citizens of that state have suffered the consequences. AMC receives frequent complaints from Florida consumers who have been overcharged or whose goods have been lost or damaged by unscrupulous, unregulated movers. Unfortunately, in Florida there is no mechanism in place to protect these consumers or to answer their justifiable complaints. That is why the Florida legislature is contemplating enactment of legislation to re-regulate household goods movers through the adoption of regulation that mirrors current ICC regulation.

AMC urges this Committee to support the exemption contained in Section 211 as passed by the Senate which allows states to continue to regulate intrastate movers. This framework of regulation will serve the American public well. States regulate a variety of consumer issues associated with household goods moving including rates and charges, estimating procedures, claims for loss or damage, and arbitration procedures. These procedures are intertwined with rules which allows van lines and agents to operate within their current structure. As such, state regulation serves both the consumer and the industry well.

In addition, Congress and this Committee are faced with restructuring the legislative jurisdiction vested in the Interstate Commerce Commission. AMC would like to address these issues as they affect the household goods moving industry. AMC supports continued funding of the ICC and believes interstate regulation of the industry should be retained by the Commission.

AMC is aware that a proposal to immediately transfer the regulatory authority of the ICC over household goods motor carrier to the Federal Trade Commission (FTC) is receiving active consideration. AMC is strongly opposed to the implementation of such a proposal for a variety of reasons.

A simplistic approach to curtailing or eliminating the functions of the ICC by transferring household goods regulation to the FTC does not take into account the full scale of ICC regulation of the moving industry. Household goods carriers do not support continued regulation by the ICC because it gives them a competitive advantage or because it places consumers at a disadvantage. Quite to the contrary, regulation by the ICC provides a uniform regulatory system that protects both individuals and carriers and ensures fair and impartial application of a body of law and related regulations on a nationwide basis. Transfer of the ICC's functions to the FTC would seriously disrupt operating practices that have been developed under this system over 60 years of experience and regulatory expertise. Some of these functions that appear to be lost in the debate over FTC regulation of household goods carriers are detailed on the next few pages of this testimony.

The ICC regulates the reasonableness of household goods carrier rates and the contents of the tariff provisions that contain the myriad of charges that are applied by carriers to recover their costs of performing so-called accessorial services (packing, unpacking, storage at origin or destination, appliance service, stair carry, limitations of liability, extension of credit and many others). The current system that is evaluated periodically by the ICC is based on a process instituted by the eminent statistician, Dr. W. Edward Deming. It provides reliable carrier costs which are the foundation of the rates and charges submitted to the ICC. And, the rates do not involve just how much it costs to transport a 10,000 pound shipment from point A to point B. Rather, they cover the full range of rates and charges that are necessary to move a family's possessions. For example, if a family moves to a third floor apartment, the cost of labor involved is more than if they move to a first floor apartment. If the family is moving to New York City, labor is more expensive than a move to West Virginia. The tariff charges for these services and the hundreds of other services inherent in a household goods move are overseen by the ICC. Extremely important in this process is the ICC's approval of rates assessed for shipment valuations, that is, the charges homeowners pay to obtain additional protection in the event their possessions are lost or damaged.

The FTC, on the other hand, does not regulate the prices that the various industries that are subject to its jurisdiction can charge for their services. FTC regulation of the charges assessed by the household goods industry would therefore, be a matter of guesswork. Neither the carriers nor the public should be submitted to such vagaries, nor should they have to endure a period of time while the FTC endeavors to gain experience in rate regulation which is at least a difficult assignment.

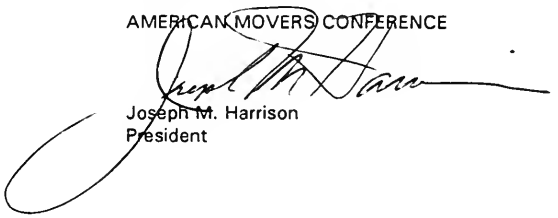
Regulation by the ICC also provides a clearly defined mechanism of consumer protections for those that move and may have a problem. Household goods carriers favor these consumer protection measures because they are applied equally to all regulated carriers and are enforced by an informed agency.

The FTC, on the other hand, does not deal with the kinds of consumer problems that are unique to the moving industry. ICC Chairman McDonald recently testified before Congress that in 1993 the ICC handled 2,830 consumer complaints against movers. These are not momentous issue complaints. Rather, they are the day to day sorts of problems that may arise in the course of a move. A few examples demonstrate the range of situations encountered by the ICC and the questions raised by consumers: *When can a consumer demand that its shipment be re-weighed and who pays for the cost of re-weighing the shipment? Should the homeowner pay for additional mileage traversed by a carrier that was caused by the detours resulting from last year's floods? What must the consumer do if he or she is shipping valuables such as art or antiques? What are the procedures to be followed if the homeowner wants to ship firearms and ammunition as part of its possessions? If the homeowner wants to sue for loss or damage, how does it serve its complaint on the carrier and where does it locate the information it requires? Should the consumer contact the carrier or warehousemen for loss or damage of a shipment that has been in storage over 90 days?* The ICC routinely handles these kinds of situations and will continue to do so even with its reduced budget. By contrast, the FTC does not deal with these unique kinds of problems in its regulation of unfair and deceptive competitive practices. Traditionally, it has taken a much broader approach to industry regulation, an approach that neither the moving industry nor the public at large can endure.

In conclusion, AMC opposes preemption of state regulation of the household goods moving industry. In addition, the transfer if the ICC's functions to the FTC will not save the federal government money, but it will disrupt meaningful regulation of the moving industry contrary to the interests of the American consumer.

Respectfully submitted,

AMERICAN MOVERS CONFERENCE



Joseph M. Harrison
President

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AMC
AMERICAN MOVERS CONFERENCE

June 30, 1994

The Honorable Nick Joe Rahall, II
United States House of Representatives
2269 RHOB
Washington, DC 20515

Dear Congressman Rahall:

The American Movers Conference represents over 3,000 household goods movers nationwide. This association and its members have a long history of supporting regulation at both the state and federal level. Particularly, AMC generally opposes preemption of state regulation. For that reason, at the request of AMC the Senate exempted the transportation of household goods from Section 211 of S. 1491, the Federal Aviation Authorization Act of 1993. I wanted to take this opportunity to share with you the concerns of my industry and the reasons that led to this exemption.

As originally drafted, Section 211 was so broad that it would allow a class of motor carriers to transport anything without economic regulation, whether it was small packages and parcels, household goods, or any other commodity. AMC believes that the regulation of household goods movers should not be left to chance. As Congress recognized in the Household Goods Transportation Act of 1980, the transporters of household goods have special responsibilities to individual shippers. The combination of state and federal regulations achieve that goal while allowing movers to compete in a stable economic environment.

At AMC's urging the Senate agreed to amend Section 211 to allow for the continued intrastate regulation of household goods movers. However, it is a matter of serious concern to the many small, intrastate movers who are AMC members that state regulatory bodies may opt out of all state trucking regulation, including moving, after passage of S. 1491. There is no doubt in my mind that passage of Section 211 will lead to complete deregulation of all intrastate freight carriers. The minimal regulations that may be maintained will be meaningless without state rate and entry authority. It would be pure conjecture to assume that the states will continue regulation of a segment of the trucking industry (e.g. movers) without the authority to reasonably regulate the balance of the industry.

For an example of what occurs with wholesale deregulation of the moving industry, one must look no further than the State of Florida. Florida deregulated the intrastate trucking industry, including household goods moving in 1980 and the citizens of that state have suffered the consequences. AMC receives frequent complaints from Florida consumers who have been overcharged or whose goods have been lost or damaged by unscrupulous, unregulated movers. Unfortunately, in Florida there is no

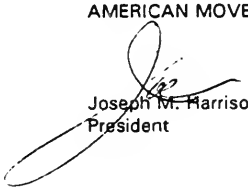
mechanism in place to protect these consumers or to answer their justifiable complaints. That is why the Florida legislature is contemplating enactment of legislation to re-regulate household goods movers through the adoption of regulation that mirrors current ICC regulation.

Before final passage I wanted to make you aware of the concerns of this industry regarding passage of this provision. I hope you will consider them in your deliberations.

If I can be of any assistance in this or any other matter, please do not hesitate to contact me.

Sincerely,

AMERICAN MOVERS CONFERENCE



Joseph M. Harrison
President

JMH:mp

STATEMENT OF CORNISH F. HITCHCOCK
ATTORNEY, PUBLIC CITIZEN

before the
Subcommittee on Surface Transportation
of the
Committee on Public Works and Transportation
U.S. House of Representatives

20 July 1994

On behalf of Public Citizen, a consumer group with 130,000 members nationwide, I appreciate this opportunity to comment on proposed changes in economic regulation in the trucking industry. The issues before you today have a direct impact on consumers, and we hope that Congress will see fit to enact reforms of the sort I will describe in a minute.

Before discussing those matters in detail, let me address a question which some of you may be asking, namely: Why should a consumer group care about these issues? What stake do consumers have in this debate? Let me offer this background.

One of the earliest Nader studies, released in 1970, was entitled *The Interstate Commerce Omission.* It examined in depth the operations of the Interstate Commerce Commission, specifically its regulation of the motor carrier industry, and recommended a number of reforms to generate more competition. The expectation was that the elimination of inefficient operating restrictions and price-fixing of truck rates would produce greater efficiencies and lower costs to consumers.

Thus, Public Citizen actively sought enactment of the Motor Carrier Act of 1980, which made it easier for trucking companies to enter new routes and offer new competing services; it also ended the industry's immunity from the antitrust laws, which had previously been invoked to let truckers sit down with their competitors and hammer out agreed-upon rates. As expected, those reforms translated into more efficient trucking

operations and, ultimately, consumer savings.

By any objective measure, the Motor Carrier Act has been a success. The economic studies are virtually unanimous in concluding that billions of dollars have been saved every year since 1980, and the Committee on Public Works and Transportation can be justly proud of its leadership and accomplishment in this area.

In the 14 years which have passed since that bill became law, experience has revealed two serious deficiencies which Congress ought to remedy.

First, the 1980 reforms left intact some residual regulatory requirements which serve no useful purpose, waste taxpayers' money, and could be abolished tomorrow with no appreciable loss. Among them are the requirements that truckers file tariffs with the ICC and also go through a bureaucratic paper-shuffling exercise when they want to add new service. These paperwork requirements can and should be eliminated.

Second, the 1980 route and rate reforms affected *interstate* operations, but did nothing to end the same types of wasteful economic regulation that govern *intrastate* operations within most states. That omission continues to cost manufacturers and retailers -- and ultimately consumers -- billions of dollars each year.

Americans for Safe and Competitive Trucking has documented how intrastate regulation of routes and rates mean that intrastate shipments can cost far higher than comparable shipments that move across state lines. There is no principled argument for continuing such a system, particularly when Congress decided 14 years ago that this type of waste and inefficiency -- which costs consumers billions of dollars each year -- will not be tolerated on an interstate basis.

That is where section 211 of S. 1491 comes in. This bill would ratify a process

which began three years ago when a federal appeals court in San Francisco ruled that the California Public Utilities Commission could not regulate Federal Express's efforts to move packages by truck within California, citing a federal law which barred the states from regulating shipments that moved incident to a shipment by air.

That ruling in the Federal Express case shone a spotlight on the waste that exists in this area: Prior to the 1991 court ruling, if a California resident wanted Federal Express to ship a package, say, 80 miles from Sacramento to San Francisco, the package had to be routed on a 3600 mile round-trip through Memphis. That system makes no sense and plainly imposes unwanted expense on consumers, yet that is what Federal Express had to do because it was so costly and expensive to get licensed to operate trucking services within California.

Section 211 of S. 1491 would confirm that the 1991 court ruling with respect to Federal Express makes sense as a matter of sound public policy. Section 211 would also extend the latitude given Federal Express in California to many other trucking companies shipping goods wholly within other states as well.

A number of truckers who were not given greater operating freedom under section 211 have argued that it would be unfair to stop where the Senate drew the line, and they argue that Congress should go all the way and preempt intrastate route and rate regulation across the board. They're right. I would add, of course, that the good should not be the enemy of the best, so if the choice is section 211 or doing nothing, enacting 211 is plainly the way to go.

I'd like to address two points which are sometimes raised in defense of the status quo on intrastate regulation issues. First, some will say that, as a policy matter, Congress

ought to leave things as they are and leave the states free to chart their own course, however misguided it may be.

One problem with this approach, apart from the cost it imposes on the public, is that allowing unfettered state regulation of intrastate truck routes and rates is the exception, not the norm, under federal laws establishing our national transportation policy. Apart from the Motor Carrier Act of 1980, every other transportation reform law which Congress passed in the late 1970s and early 1980s limited the states' ability to pursue anti-competitive or inefficient regulatory policies on an intrastate level. Thus, in the airline area, Congress totally preempted the ability of states to dictate routes and rates on intrastate routes. And in the area of intercity bus travel, Congress created a mechanism whereby state regulatory decisions could be appealed to and overturned by the ICC.

Only in the area of motor carrier regulation has Congress failed to enact a similar provision, and the question must be asked: Why should the trucking industry enjoy a special privilege which Congress has not extended to other transportation industries? I have never heard a principled defense of this special treatment of intrastate trucking operations.

Second, let me mention something which is not at stake here, namely, safety. Section 211 quite properly recognizes that states may regulate truck safety, consistent with federal law, and also that states cannot use safety as a rationale for cartel route-and-rate regulation. This approach is sound. There is no empirical evidence to suggest that the current system of intrastate economic regulation protects public safety, just as no one has convincingly shown that the economic reforms made by the 1980 act diminished safety. Indeed, the 1970 ICC study which I cited at the outset identified a number of safety

85-090 95 – 13

problems which were occurring under the strict regime of economic regulation which the ICC was then enforcing, phenomena which one would not expect to see if it were really true that regulating an industry like a cartel guarantees public safety.

All available evidence suggests that the best way to protect public safety is to adopt and enforce strict safety standards. The point illustrated by a 1987 report prepared by the California Public Utilities Commission and the California Highway Patrol. That study examined the experience over a ten year period when the California PUC alternated between lax and strict approaches to economic regulation of the trucking industry in that state. What the PUC-CHP study found was that regardless of what kind of economic regime was in effect at a given time, the level of accident rates was closely correlated to the number of inspections being performed. Differently put, more inspections mean fewer accidents, and fewer inspections mean more accidents.

In conclusion, and to put this issue in perspective, there are some issues which come before the Congress which are daunting in their complexity and difficulty. Health care reform may be one example. On the other hand, there are issues where the problem is straight-forward and the solution is stunningly simple. This issue is one of the latter. The bits and pieces of economic regulation which remain at the federal level, as well as the broader network of restrictions that affect intrastate trucking, do nothing but produce waste, inefficiency and higher costs for consumers. The solution is easy: Abolish these limitations, do it now, and let's move on to other issues.

Thank you.

STATEMENT OF FRED E. KAISER

on behalf of the

AMERICAN BUS ASSOCIATION
and the
NATIONAL BUS TRAFFIC ASSOCIATION

ON

STATE MOTOR CARRIER LAWS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

WEDNESDAY, JULY 20, 1994

2167 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C.

American Bus Association
1100 New York Avenue, N.W.
Washington, D.C. 20005
(202) 842-1645

Mr. Chairman and members of the Subcommittee, my name is Fred Kaiser. I am President of the Kerrville Bus Company in Kerrville, Texas. I appear here today representing two intercity bus organizations: the American Bus Association (ABA), where I serve as Vice Chairman, and the National Bus Traffic Association (NBTA), where I am a member of the Executive Committee.

ABA represents some 700 bus operator members throughout the United States. Our members provide passenger transportation through regular intercity routes, charters and tours, and express airport and commuter bus service.

NBTA, located in Washington, D.C., is the rate bureau for the intercity regular route bus industry. Its purpose is to publish tariffs applicable to the interstate and intrastate transportation of passengers, baggage, and express.

Mr. Chairman, just over two years ago, I testified before this subcommittee in support of H.R. 4325, section 3(a), which would have amended 23 USC 161 to provide that no State shall have in effect or enforce any law or regulation relating to--

> intrastate rates, routes, or services of any
>
> interstate motor carrier, interstate private

motor carrier, or intrastate broker which
provides intrastate transportation of
property, including express packages.

I suggested that it needs to be clear that "transportation of property" includes the transportation of express by motor carriers of passengers.

I also testified then that H.R. 3221 would place bus operators who transport express at a competitive disadvantage by preempting State authority only with respect to the transportation of express by national intermodal carriers. Bus operators would continue to be subject to the delays, expense, and disclosure requirements inherent in State regulation of rates had that legislation passed. I suggested that H.R. 3221 should be amended by inserting after the words, "national intermodal carrier," on page 2, line 23, the following: "or any motor carrier of passengers."

Today, I appear before you to testify on S.1491, to amend the airport and airway improvement act.

Transportation of package express is an important source of revenue for motor carriers of passengers. It accounts for approximately 10-15 percent of the gross operating revenues of carriers engaged in regular-route service; on rural routes, this percentage is considerably higher. Package express service by bus is a vitally

important service in numerous small and rural communities throughout the country. It is essential to maintain a level playing field. Neither Federal nor State regulation should provide a competitive advantage to any particular type of carrier engaged in the surface transportation of express.

Intrastate transportation of express shipments by bus accounts for approximately 25-30 percent of all bus package express shipments. If S. 1491 were enacted as passed by the Senate, bus operators would be at a distinct competitive disadvantage. Most operators do not meet the required 15,000 annual usages as described in new subparagraph 101(25)(B)(ii) of Section 211, Intermodal All-Cargo Air Carriers, nor are they likely to hold themselves out as indirect cargo air carriers. Therefore, we recommend adding the phrase, "or (III) is an intercity bus carrier providing the transportation described in section 105(a)(4)." This would allow intercity bus carriers of package express to be exempted from state regulation of such package express carriage to the same extent as motor freight carriers covered by the amendment. Without the same freedom to compete for that package express business enjoyed by its motor freight competitors, intercity bus companies will likely lose package express business and rural bus service will be jeopardized.

Thank you, Mr. Chairman, for the opportunity to speak before you today, and I will be pleased to answer any questions which you may have.

MICHAEL N. KHOURIE
Attorney At Law

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San Francisco, CA 94105
Tel: (415) 543-9600
Fax: (415) 543-5043

July 18, 1994

VIA FEDERAL EXPRESS

Congressman Nick J. Rahall, II
Chairman, Surface Transportation Subcommittee
Rayburn House Office Building - Room B376
Washington, DC 20515

Re: Rider to Senate Bill 1491 (Section 211)

Dear Congressman Rahall:

I represent Cal Pak Delivery, Inc., a LTL carrier of small parcels in California

I have very recently been informed that the Surface Transportation Subcommittee is scheduled to hold hearings on the Section 211 Rider to Senate Bill 1491. I talked to a number of your staff and asked if I could be a live witness but was advised that it was too late for me to testify. I earlier wrote a letter dated July 12, 1994, to all members of the House Aviation Subcommittee setting forth my points of view in opposition to the bill. I have sent one to you as a member of that subcommittee.

By this letter I am sending you the same letter in your capacity as Chairman of the Surface Transportation Subcommittee. I hereby request that it be made part of the record and that the views expressed therein be considered.

I am also enclosing Comments made on behalf of my client to the California Public Utilities Commission which has decided to investigate the disruptive influence that a bill, passed by the California Assembly, which is very similar to Section 211, has on competition in California. I also include a

letter dated June 17, 1994, written to approximately 100 carriers and shippers in California.

I hope you will take this material into consideration. I thank you for your courtesy and assistance.

Very truly yours,

Michael N. Khouri

Michael N. Khouri

LL31RAHA.MNK:vl

Enclosures

MICHAEL N. KHOURIE
Attorney At Law

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San Francisco, CA 94105
Tel: (415) 543-9600
Fax: (415) 543-5043

July 12, 1994

Dear Members of the House Aviation Subcommittee:

Re: Rider To Senate Bill 1491, Section 211
Federal Aviation Administration Act

I represent Cal Pak Delivery, Inc. (Cal Pak), a highway common carrier in California which conducts a LTL (less than truckload) small package service. It has no air operation. Its principal competitor is United Parcel Service Inc.'s ground service.

I am writing this letter to urge you not to approve the Section 211 rider (rider) to Senate Bill 1491. The rider, if passed, would exempt from the regulation of 40 separate states any transportation company which fits the definition stated therein for an integrated intermodal all cargo air carrier. As you are aware the threshold for qualifying under the rider is a minimum number of times per year a transportation company puts freight on an airplane. This minimum started at a very high level which would exclude from the bill's benefits every carrier in the United States except UPS and Federal Express. But it was gradually reduced when Senators Ford, Dole, Helms and Sasser intervened on behalf of other large carriers.[1] They were apparently unaware of or deliberately ignored the adverse competitive impact the measure will have on smaller totally ground and intermodal companies within and without of their states.

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[1] The favored carriers as reported in the Wall Street Journal edition, June 20, 1994, are: United Parcel Service, Inc., Federal Express, Consolidated Freightways, Overnite Transportation Co., Yellow Corp. and Carolina Freight Corp.

Nowhere in the Senate debate is any mention made of the most critical point, the one which is causing so much misunderstanding and apprehension. (Congressional Record - Senate, June 10, 1994, pp. S6774-6777.) The basic concept here is to insure that air and air-related ground transportation are not subject to state regulation as contemplated by the Federal Aviation Act and restated in Federal Express Corporation v. California Public Utilities Commission, 936 F.2d 1075 (1991). For example, the entire business operation of Federal Express (Fed Ex) is already entirely exempt from state regulation but only because its entire business is devoted to air and air-related services. This is clearly and emphatically not the case for other carriers who will come under the coverage of the rider and who will qualify for total operational exemption merely because they transport by air 15,000 times a year. But, as we will demonstrate, such air transport may be but a tiny part of a large transportation company's entire business. Whatever the extent of a company's air and air-related movements, they should be exempt from state regulation. But to exempt an entire company's operation when only part of it fits this category is unjustifiable by any standard.

Because these matters are not simple to comprehend and the consequences of a badly premised enactment will have most serious ramifications, it is important to have hearings. During the Senate debate Senator Grassley of Iowa stated:

> "I wish the Senate could have hearings on this matter so that the interests of all parties affected could be fully aired. As it stands many individuals whose lives may be impacted by this legislation are not even aware of the details as the Senate proceeds in an unconventional manner to address the issue of truck regulation.
>
> * * *
>
> I fear that the Senate is acting hastily and carelessly on this issue and I would urge that we step back from this decision and consider the matter with the deliberation and thoughtfulness it deserves."

This rider excludes from its immeasurable competitive benefits thousands of transportation companies in the United States. As Senator Exon suggested, the only way a small transportation company may obtain the rider's philanthropy is to

have a voice in Congress. Certainly Senators Ford, Dole, Helms and Sasser are not those voices.

We are aware that my client, Cal Pak, does not possess the political influence to be included because the legislatively forged definition keeps it and thousands like it under state regulation. All that can be hoped for is to convince you that the definitions in this rider are unrelated to economic or business reality and unnecessarily create an uneven playing field. They were written for no other reason than to afford six very large companies, which have access to powerful consorts in Congress, a legislative, rather than a market-driven, competitive advantage.

The Wall Street Journal in reporting the Senate's action on the rider stated that it was attached to an unrelated airport grant bill and "was passed late last Thursday night [June 16, 1994] on a voice vote." It is our hope that neither the House Aviation Subcommittee nor the joint committee will further engage in this secretive process because the issues here are much more serious and far-reaching than the proponents have led you to believe. All we ask for is an open window and the light of day so that before a vote is taken on the rider, its true impact will have been considered and the fetid odor of backstairs favoritism is absent.

DESCRIPTION OF UNITED PARCEL SERVICE, INC.

Before detailing the insupportable premises underlying the rider, I want to give some facts about its principal instigator and lobbyist, United Parcel Service, Inc. (UPS). This company deserves special attention because it dominates the market in which it principally competes: the ground, nonexpedited, nonguaranteed small package service market. Not too much is known about UPS because it is a private company. I am in a position to give you some considerable insight only because during the last 30 years I have been involved against UPS in both federal antitrust litigation and proceedings before the Interstate Commerce Commission and the California Public Utilities Commission.

UPS is the largest transportation company in the world. Its gross sales of $17.8 Billion in 1993 is greater than the combined total gross sales of Federal Express, Consolidated Freightways, Overnite Transportation Co,, Yellow Corp. and Carolina Freight Corp., the five other known beneficiaries of the rider. UPS' wealth is huge and would be considered legendary were it publically known. Because it is a privately held company, UPS withholds its financial statements. As a result its

total profitability, after eliminating intercorporate transactions, is not known. There are some things, however, that I have discovered. During the past single year (without the benefit of the rider) UPS' profits increased by more than 60%. The subsidiary which operates in California and some other states alone increased its retained earnings from $1.4 to $1.9 Billion during the four-year period 1989-1992, after paying 4% of its gross receipts (between $300 and $400 Million) to its parent corporation, United Parcel Service of America. No one knows, and UPS is not telling, the total consolidated size of its treasury which it attained under the present state of the law.

Why has UPS been able to earn and recently dramatically escalate its already bloated profits and wealth? The answer is simple. UPS controls, that is, actually collects the shipper revenue from, over 75% of the ground small parcel delivery shippers in the United States. (See Wall Street Journal, May 25, 1994, p. 2.) This means that the remaining 25% of the market is fragmented into thousands of small competitors throughout the country. UPS probably possesses monopoly power which is defined in Sherman Act terms as the power to control prices or eliminate competition. In addition, UPS' management has a solidly proven record of predatory and unlawful conduct. Its predation is clearly st forth in a detailed opinion by a federal court. See Marnell v. United Parcel Service of America, Inc., N.D. Cal. (1971) 1971 CCH Trade Cases, para. 73,761. Of all the savage assaults on business ethics described in Associate Justice Tom C. Clark's opinion, perhaps the most chilling are UPS' deliberate deceptions made to governmental bodies, a point which should not be overlooked because it is particularly relevant here.

In 1992, in California, UPS actually created false evidence deliberately in an attempt to support a rate increase it knew to be illegal. Despite a CPUC warning given it prior to the increase, UPS nevertheless arrogantly increased its rates and unlawfully overcharged its approximately 160,000 shippers in California in excess of $35 Million. The CPUC and the California Supreme Court found the rate increase to be illegal, ineffective and an overcharge. So great is UPS' power over governmental processes, it still retains every cent of the spoils of the illegally attained funds and the CPUC, so far, has allowed it to keep every dollar of overcharge as a reward for its unlawful conduct. UPS has not given notice to its overcharged shippers as required by General Order 158A, nor has the CPUC required it to do so. Thus far virtually none of the 160,000 shippers have any knowledge of this illegal jostle. We submit it would be a serious default in your duty to the American people to add to this particular company's already uncontrollable power.

THE COMMITTEE SHOULD REJECT THE RIDER UNTIL A PUBLIC HEARING IS HELD.

It is the UPS that I have described which is about to receive another donation, this time from Congress to appease its seemingly bottomless gluttony. It is utilizing its vast wealth and influence as a means of accessibility to you in order to get another competitive advantage, this time a legislative one, over its disappearing competitors. In justice, Congress should have a hearing to test the truthfulness of the rider's premises, because to pass it without knowing the truth is to risk great and irreversible harm to many business people in the United States.

FACTS THE SUBCOMMITTEE WOULD DISCOVER AS THE TRUTH IF IT HOLDS A HEARING.

If the Subcommittee were to conduct an investigation which involved public presentations by ourselves, other carriers and shippers, it would immediately and indisputably become clear that a negative vote is the only principled course to follow. The facts will show the following:

1. A hearing will reveal that it is an unmitigated falsehood that state regulation prevents UPS from trucking packages directly on many shorter routes. It is even a more serious deception for UPS to represent that the problem is of such magnitude that the only solution is removing from regulation the entire intrastate operations which UPS conducts in 50 states. In reality no real problem exists which amounts to anything but a tiny triviality.

UPS may be correct in its claim that the few intrastate air/expedited packages which are line-hauled by ground and therefore never got into the air are subject to regulation in some states. But the problem, if it exists, is minuscule. In 1987 in California UPS moved a mere 14,000 intrastate air/expedited packages entirely by ground transport during one month. During the same month UPS handled 9,500,000 packages intrastate entirely by ground. Thus, an amount of packages which is barely over zero percent of the total ground packages handled are the source of the "problem." If Congress sees this triviality as a problem meriting its precious attention, then perhaps a bill will openly be introduced to remove those packages from state regulation. Certainly an appropriate definition can be drafted. However, the concept of exempting UPS' entire business operation from regulation, as proposed in the rider, is unimaginable and if implemented will be a monstrous overkill with serious nationwide ramifications. There is no conceivable reason

to bestow upon UPS this utterly unjustifiable political favor. The answer to the problem: deregulate the 14,000 packages.

2. A hearing will clearly disclose that UPS' air/expedited operation is but a small component of UPS' entire intrastate operation. Yet UPS has represented to the PUC in California that it constitutes a "major component" thereof. The word "major" would need to undergo a major overhaul in order for one to believe this assertion was true.

UPS' services are not defined by the vehicles or aircraft which carry the packages, but by the rates it charges for pickup and delivery services it renders. UPS has two levels of charges which principally reflect the different time commitments it makes to the shipper. First, for its air/expedited (one, two or three day) guaranteed service, UPS charges a premium rate which, on the average, is six times higher than UPS' other category of rates. Only one out of every 100 packages handled intrastate by UPS are in this rate category. Second, for its nonexpedited, no guaranteed delivery service, UPS' rates are, on average, six times lower than for the expedited service. Ninety-nine out of every 100 packages handled intrastate by UPS pay this rate. These figures are based on UPS' California intrastate traffic reported to the CPUC for 1991.[2]

If UPS has failed to advise you of these facts, it has misled you. Thus, although it may be literally true that the two operations are partially integrated, albeit on a 100:1 ratio, it is a major misrepresentation to state that air is a "major" component of its entire system.

3. A hearing would reveal that UPS' air service extends no benefits at all to the highly profitable ground services. The ground pickup, sorting and delivery functions were already in place when UPS entered the air business and the

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[2] The overwhelming majority of all of the air/expedited packages are line-hauled by air, but some may be line-hauled on trucks since the time of delivery, not the mode of transport, is the critical factor. Almost all of UPS' nonguaranteed service is line-hauled by truck but some may go by air. Early delivery is irrelevant to this low-rated ground service regardless of the mode of line-haul both because there is no time commitment and the shipper does not expect it. UPS has chosen to commingle air/expedited and standard packages on the ground for local pickup, sorting at central facilities and for local delivery.

relatively small air volume has probably hindered rather than helped the efficiency of the intrastate ground operation. However, economies of scale and size inherent in the ground operations have played and continue to play a major part in subsidizing the cost basis of the air operation. The rates UPS may charge for air service have a competitive lid. They are subject to the intense competition of Federal Express, a pure air carrier. It is UPS' immense throng of ground-only shippers who are being soaked by its monopoly pricing in order that UPS may better price compete with Federal Express. Freeing UPS from state regulation but keeping its thousands of competitors under the 40-state yoke will only add to UPS' already overwhelming power over the ground small parcel market.

4. A hearing will prove beyond doubt that granting immunity to UPS will cripple the ability of thousands of competing ground LTL small package carriers to survive. This rider dangerously tilts the playing field by allowing the one huge company which dominates the market to go unfettered while requiring its competitors to be hindered by regulation. If the rider becomes law, you will be sanctioning an insurmountable and discriminatory competitive advantage to UPS over its LTL competitors in this market.

Your committee should clearly understand that no one opposes exempting all of the packages in UPS' air expedited operation even if they move entirely on the ground within one state. But do not be sold on the falsehood that under existing regulatory structures UPS cannot now effectively compete in the air market unless its entire business operation is exempted from state regulation.

5. Have the Senators who sponsored this rider considered the financial impact which such a bill may have on the regulatory bodies of the states? In California alone, where UPS was successful in hoodwinking the legislature into exempting its entire operation from regulation (A.B. 2015) because it was an integrated intermodal small package carrier, the taxpayers will now be required to donate over $1 Million a year to replace the regulatory fees UPS no longer is forced to pay. At the same time, payment of common carrier fees is required of its competing regulated carriers. This rider will multiply this money gift to UPS into more millions of dollars.

6. There can be no more convincing proof of the a priori wrongness of the rider than what is currently happening in California. In August 1993, UPS lobbied and had passed A.B. 2015, a bill similar in all important respects to the rider

before you. UPS convinced the legislature to pass the bill based on the rationale that it was an integrated, intermodal package carrier. The legislation was enacted on short notice, as an emergency measure and as a rider to an unrelated bill, the same pattern we see here. The legislature ignored the opposition to A.B. 2015 which argued that the bill, if passed, would amount to no more than a double political gift. First, it would grant UPS' all-ground operation an insurmountable competitive advantage by freeing it from, but leaving its small package LTL competitors subject to, regulation. Second, it would simply hand UPS a cash gift each and every year in the amount of about $1 Million in the form of reduced regulatory fees. Its competitors, of course, would continue to be required to pay fees for the privilege of being burdened by regulation.

A.B. 2015 became effective on January 1, 1994, and, not surprisingly, UPS was the only carrier in California that could fit into the narrow definition which UPS demanded and got from the legislature. After only four months of the operative life of the bill, in April the CPUC has publicly acknowledged that A.B. 2015 "has had the unintended effect of disrupting the competitive balance between carriers, thereby compromising these goals." (Emphasis supplied.)[3] Thus, after the big UPS horse has galloped free through the barn door, the CPUC has commenced what promises to be a long and expensive investigation into the very question which should have been answered before A.B. 2015 was passed. As is true in California, it is a certainty here that if you pass the rider, it will disrupt the competitive balance between UPS and thousands of LTL carriers in 40 states. The admonitions of Senators Grassley and Exon should be scrupulously heeded.

Enacting the rider is a huge step which I should think you would not wish to take without being sure this letter is wrong. Thus we urge you to find out for certain whether UPS needs to exempt its entire intrastate operations nationwide as the only way for it to handle the few air/expedited packages which go intrastate by ground. I urge you to hold hearings to determine the truth. My client and I are ready to submit documents and testimony to you to support everything stated in this letter. If you seek UPS comments on some of the points in

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[3] The goals, as set forth by the CPUC, are public safety, consumer protection, adequate service, low rates and efficient operation.

this letter, we would hope that, in fairness, you would also allow us to hear and rebut them if we believe them to be misleading.

Very truly yours,

Michael N. Khourie

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

Order Instituting Investigation in the matter of the regulation of general freight transportation by truck.	FILED PUBLIC UTILITIES COMMISSION MARCH 16, 1994 SAN FRANCISCO OFFICE I.94-03-036
Order Instituting Rulemaking in the matter of the regulation of general freight transportation by truck.	R.94-03-037

COMMENTS BY RESPONDENT CAL PAK DELIVERY, INC.

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Attorney for Petitioner,
CAL PAK DELIVERY, INC.

Dated: June 15, 1994.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

Order Instituting Investigation in the matter of the regulation of general freight transportation by truck.	FILED PUBLIC UTILITIES COMMISSION MARCH 16, 1994 SAN FRANCISCO OFFICE I.94-03-036
Order Instituting Rulemaking in the matter of the regulation of general freight transportation by truck.	R.94-03-037

COMMENTS BY RESPONDENT CAL PAK DELIVERY, INC.

PREFATORY STATEMENT

Pursuant to ordering paragraph 2 of the Order Instituting Investigation and Rulemaking dated May 16, 1994 (Order), Respondent Cal Pak Delivery, Inc. (Cal Pak) hereby presents its comments.[1]

The Order describes the instant proceeding's purpose. It is to "examine whether recent legislation creating the Integrated Intermodal Small Package (IISP) carrier has had the unintended effect of disrupting the competitive balance between

[1] Although Cal Pak has neither been served, as required by ordering paragraph 11, nor included in the list of addressees, these Comments are submitted with the hope that they will receive at least equal consideration to comments submitted by officially notified shippers and carriers, including those of UPS.

carriers, thereby compromising these goals."[2] Order, p. 1. (Emphasis added.)

A fair reading of the Order suggests that there exists numerous IISP carriers and that there is only a slight "competitive [im]balance" between regulated LTL small package carriers and IISP carriers. Such an impression is seriously out of sync with reality. The Order makes repeated generalized references to an IISP carrier classification as if there were no way to identify any by name. The Order omits to disclose that there is only one such carrier and that its name is United Parcel Service, Inc. (UPS). Because of this unique and critical fact, the depth and dimensions of any measures required to rectify the now acknowledged disruption to competition caused by A.B. 2015 will need to be much more drastic and far-reaching than any suggested in the Order.[3]

The Commission is mindful that not only is UPS the only IISP carrier, but it is also the largest trucking company in the world. A description of UPS' services, its competitive status and its pricing structure is essential to understand before any

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[2] These goals are described as promotion of public safety, consumer protection, adequate service, low rates and efficient regulation of general freight transportation. Order, pp. 1 and 13.

[3] As the Commission may be aware, Cal Pak vigorously opposed the passage of A.B. 2015 by writing letters to several senators and assemblypersons as well as in personal testimony before the Senate Energy and Public Utilities Committee. In both forums Cal Pak publically warned of what the Order now characterizes as "unintended effects."

measures are adopted. This description is set forth in Footnote 4 herein.[4]

UPS has a huge market share in the standard service

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[4] UPS derives virtually all its revenue from services which pick up packages at the shippers' premises and which are then sorted in a central sort facility and delivered to the consignees' premises. It renders two general categories of service. The first UPS calls its Standard Delivery Service. This service is provided in two formats: (1) the delivery of single packages at a per package rate (single parcel service) and (2) the delivery of multiple parcels between one consignor location and one consignee location on the same day for a shipment rate (Hundredweight LTL Service). The single parcel service is competitive both with the Post Office's regular parcel post service and, to a lesser degree, with hundreds of regulated LTL carriers. The Hundredweight Service is competitive only with LTL carriers. Standard Delivery Service has three characteristics that distinguish it from UPS' Expedited Delivery Service which will be described below. There is no guaranteed delivery time, is almost invariably all-ground (pick up, sort, line haul, sort, delivery) and is low rated.

The second service UPS calls its Expedited Delivery Service. It is both a single parcel and Hundredweight Service and is competitive principally with Federal Express (Fed Ex) and the Air Service of the Post Office (Air Parcel Post). This service is distinguishable from UPS' Standard Delivery Service in that it guarantees either next day or second day service, the line haul is mostly by air but often an expedited ground line haul is utilized, and the rates, on average, are six times greater than the standard service rates.

UPS derives over 80% of its $17 Billion revenue from its standard, nonexpedited service which, because of the vast disparity of price and delivery commitment, is only marginally, if at all, competitive to its own, Fed Ex's and Air Parcel Post's expedited services. UPS derives the highest profit margin from the single parcel standard service, the market in which Parcel Post is its principal competitor. With those high profits UPS has supported both its Hundredweight LTL Service, which is in competition against hundreds of regulated LTL carriers, and its Expedited Service competition against Fed Ex and Air Parcel Post by commingling and cash subsidies.

industry which is otherwise highly fragmented despite the inept competition of parcel post. Other entrants are tiny compared to UPS.[5] Yet UPS alone is unregulated.[6] The legislature saw fit

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[5] The Wall Street Journal on May 25, 1994 reported the following:

> a. Of UPS' total system revenue of $17.1 Billion only 17% or $3 Billion is derived from its air service. Thus 83% of UPS' receipts are derived from its all ground, nonexpedited, low-rated standard single parcel and Hundredweight LTL services. UPS reported to the Commission that in 1991 only one package out of 100 was expedited and 99 were handled by its standard service.
>
> b. UPS controls 75% of the ground parcel market in the United States. This market share figure is at serious odds with the Transportation Division's admittedly unsubstantiated estimate that UPS controlled only one-third of the relevant market. See Advice of Participation Planned by Transportation Division dated April 8, 1993, In Re Application of United Parcel Service, Inc., et al., No. 93-02-018, pp. 4-6.
>
> c. UPS' profit rose from $516 Million in 1989 to $809 Million in 1992, an increase of 60%.

The Wall Street Journal article referred to above is attached hereto as Exhibit 1.

[6] UPS obtained the passage of A.B. 2015 by carrying out a lobbying campaign which was deceptive. It represented that UPS' entire operation, including its Standard Delivery Service had to be rendered statutorily immune from regulation or else it would be incapable of competing with Fed Ex, which is exclusively an air carrier, on a "level playing field." The most inventive of its concoctions is UPS' representation to the legislature that A.B. 2015 would not adversely impact UPS' LTL small package competitors. The "unintended effects" referred to in the Order are a clear demonstration that UPS' insistence that its entire business required deregulation in order for it to compete with Fed Ex was a false premise. See Conlon Concurrence, Commission Resolution TL-18602. In successfully inducing the Commission to grant its application for IISP carrier status, UPS represented that "Clearly, the operations of UPS by air are a major component of this (UPS' entire) system." (Emphasis added.) This is false and a hearing should be held to determine its veracity. The

to spring UPS loose without study, caution or restraint while ignoring the dire competitive consequences which clearly would befall highway carriers. These consequences are now tardily being recognized and addressed by the Commission in the Order.[7]

UPS is no longer required to make public any of its prices while its competitors are obligated to make public their pricing through tariff and contract filings. The filing of tariffs and contracts also requires LTL carriers to disclose to

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assertion is but a repetitive continuation and part and parcel of the double hoax UPS foisted upon the legislature. First, that it was impossible for UPS to compete with Fed Ex unless its standard services were exempted from regulation along with its air service. Second, that regulated LTL small parcel competitors would not be adversely affected.

UPS' air service is not a "major component" of its integrated operations unless 1/100th is redefined as major. No rational person could believe that because only one package out of every one hundred packages are air packages, it follows that all parcels in the system should be deregulated. This is exactly the situation here. The truth is that the huge volume of nonexpedited, low-rated packages which gives UPS its capacity for density in every area of the United States has operated with extreme profitability for decades under regulation. Contrary to all of UPS' efforts to mangle the truth, the commingling of air packages with the standard service has had virtually no effect on the standard service. But very much to the contrary, the air service is in large measure subsidized by its integration with the standard service.

[7] It is of extreme relevance to note that when a change in status regarding UPS was involved, the Commission did not institute a formal and lengthy proceeding to determine, first, if A.B. 2015 would disrupt competition. It lent its support to UPS seemingly only because UPS wanted it. Now, that the big horse has galloped free through the bar door, the Commission wants to study the problem in the instant proceeding entailing lawyers, tons of paper, formal rules, comments, responses to comments and hearings. By the time this proceeding is over, it will be too late for many carriers.

UPS all other terms of doing business with their customers, e.g., claims, C.O.D.'s, returns, etc., while UPS can keep their own terms confidential from both competitors and other customers. Thus in setting its prices and conditions of service, UPS may tailor its game plan to meet individual competitive situations with the assurance that competitors do not know what it is offering. This is an overwhelming anticompetitive weapon, particularly in UPS' hands.

Furthermore UPS may now discriminate from shipper to shipper. And because it is no longer a common carrier it has no obligation even to serve. Thus when UPS' ability to serve every address in the United States is coupled with shippers' disinclination to have more than one carrier pick up shipments at their premises, UPS' right not to serve shippers at all is indeed a daunting anticompetitive weapon.

Also because UPS may in its absolute discretion decrease rates to any level, it may target the customers of competing carriers one by one and, with its limitless resources, subsidize losing rates until the competitor falls. Likewise because UPS has the absolute discretion to increase prices, as it already has, it will continue to reward itself with monopoly profits.[8]

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[8] As the Commission knows, UPS is owned by a parent corporation, United Parcel Service of America, Inc. (UPSA), over which the Commission has never had regulatory jurisdiction. Cal Pak is informed that each UPSA operating subsidiary, including UPS, is obligated to pay UPSA 4% of its gross receipts off the top ("additional business service expense") and 50% of their profits before taxes. Because UPSA is not regulated the

Although UPS has competition in its air segment, it has very little effective competition to restrain its pricing and service activities in either the standard single parcel and the hundredweight LTL service it offers.[9] With its market dominance plus UPS' proven predilection to act predatorily against competitors,[10] the Commission must act to level the playing field. None of the measures suggested in the order will adequately do so.

Cal Pak believes that the Commission is not empowered to deregulate any common or highway carrier. On the contrary,

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Commission apparently has no information as to the amount of these payments and further does not know to which UPS expense account this distribution is allocated. See Advice of Participation in A.93-02-018 dated April 8, 1993, pp. 6-7. Justice Tom Clark characterized UPSA as the "national money bags for UPS' operating companies." Marnell v. United Parcel Service of America, Inc., N.D.CA 1971 CCH Trade Cases ¶ 73,761, pp. 91,225. As the Commission knows, even under regulation the UPS subsidiary operating in California increased its retained earnings from $1.4 billion to almost $1.9 billion during the years 1989 and 1992. No one knows how much of its profits have been transferred to UPSA nor how wealthy UPSA has become. It would be difficult to predict anything but a vast increase in wealth resulting from the new status.

[9] Recently RPDX has been reported to be UPS' principal competitor in ground small package LTL (Hundredweight) traffic. But the disparity in market power is huge. As reported to the Commission Roadway's nationwide gross receipts are under $750,000,000, which may not be entirely from its small parcel operation. UPS' are more than $17 Billion, over 22 times the size.

[10] See Marnell v. United Parcel Service of America, Inc., N.D.Calif., 1971 CCH Trade Cases ¶73,761 (1971) for a description of a host of astonishing vulture-like practices engaged in by UPS, including deliberate deception of the Commission.

the Commission has the Constitutional and statutory responsibility to regulate carriers and require that services and rates shall be just, reasonable and nondiscriminatory. P.U. Code §§451, 453. California Constitution, Article XII, §4. A careful reading of the Order indicates that the Commission proposes to do indirectly what it is not empowered to do directly. It apparently believes it can solve the stated dilemma by creating a series of complex exceptions and exemptions to equalize competition. This course of action will not work and appears to be Constitutionally infirm.

Cal Pak agrees with the Commission that A.B. 2015 has created an injustice. Something must be done to correct the wrong and to undo ongoing and future damage to UPS' single package and LTL competitors. We believe the Commission should follow Commissioner Conlon's advice given in his concurrence to Resolution TL-18602, December 1993. First, pursue clarification of the legislative intent behind A.B. 2015. If that intent is ascertained to have been to grant IISP status only to air related operations competitive to Fed Ex rather than to all of the operations of a company, then the Commission may follow two paths. If, under the rules of statutory construction, the language of A.B. 2015 admits of interpreting the statute as pertaining to air operations only, the Commission should announce its new interpretation, revoke UPS' certificate and issue a new one limited to air. If statutory construction rules do not allow

such an interpretation, the Commission should expose the false premises UPS utilized to obtain A.B. 2015's passage and lobby the legislature to amend the law to conform to its true intention.

If, upon pursuit of legislative intent, the Commission should find that the purpose was in fact to exempt from regulation the total of a company's business if any segment is engaged in IISP carriage, then the Commission should present to the legislature the "unintended" competitively disruptive effect A.B. 2015 has wrought and lobby for a limiting amendment or complete repeal. If this course is realized, UPS' IISP carrier certificate should be revoked or limited accordingly. If the legislature fails to repeal or limit A.B. 2015 by amendment, then the Commission should lobby the legislature to pass deregulating legislation for all UPS' LTL small package competitors.

CAL PAK'S ANSWER TO SPECIFIC QUESTIONS

Q. 1: Even handed regulation not favoring UPS. Work for a lawful system of regulation that applies equally to all small parcel and LTL carriers who deliver small parcels. The Commission should revise its decision to support A.B. 2015 and either seek to have it repealed or have its application to UPS' entire operation declared violative of the Constitution as an infringement of equal protection of the laws.

Q. 2 and Q. 3: Goals 2, 3 4 and 5 cannot be satisfactorily achieved by any of the proposed alternatives. Either UPS standard service must be brought back under regulation or small parcel carriers must be freed of the requirement of being highway or common carriers.

Q. 4: Yes. See Prefatory Statement.

Q. 5: Whatever the basis, the fee burden should be equalized and the injustice of the fee structure created by A.B. 2015 in granting an annual gift to UPS of over $1 million should be eliminated.

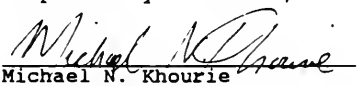
Q. 8: The most pressing need is to make all carriers who conduct ground only small parcel delivery equal under law immediately, whether under regulation or not.

Q. 10 and 11: Price discrimination will always be a problem whether carriers are regulated or not. Because there are few personal considerations between the customer and large carriers, in particular, carriage of parcels for customers is always stamped with a public trust. Some regulation should be looked into. The bigger problem is UPS' huge power in the marketplace. UPS' ground service has no viable competitor now. When its national coverage of all addresses is coupled with both its newly acquired pricing freedom and its huge treasury, none is likely to develop or to survive if it evolves. Regional carriers cannot compete with UPS both because shippers disfavor multiple carrier pickups for similar traffic and shippers have anxieties

about being cut off by UPS. The problem is compounded by UPS' ability and propensity to act predatorily without competitive or regulatory restraint. The Commission must keep these factors in mind as it seeks a remedy for the disruption of the competitive balance, it has now recognized.

Dated: June 15, 1994.

Respectfully submitted,



Michael N. Khourie
Attorney for CAL PAK DELIVERY, INC.

VERIFICATION

I, EDWARD J. MARNELL, declare as follows:

1. I am the President of CAL PAK DELIVERY, INC., a California corporation, Respondent in the present matter, and I am authorized to make this Verification for and on its behalf.

2. I have read the foregoing COMMENTS BY RESPONDENT CAL PAK DELIVERY, INC. and know the contents thereof. The same is true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 15, 1994, at Yuba City, California.

Edward J. Marnell

Edward J. Marnell

Driving Harder

As UPS Tries to Deliver More to Its Customers, Labor Problems Grow

Work Force Resists Measures Firm Deems Necessary In a Competitive World

Packages Go Under Left Arm

MAY 2 5 1994

By Robert Frank
Staff Reporter of The Wall Street Journal

ATLANTA—Since long before "re-engineering" and "right-sizing" were buzzwords, United Parcel Service of America Inc. has stood as a model of corporate efficiency.

It knows exactly how many workers it needs to deliver its 16 million packages a day. It talks drivers how fast to walk (three feet per second), how many packages to pick up and deliver a day (400, on average), even how to hold their keys (teeth up, third finger).

This attention to detail has always been at the core of Big Brown's success. Owned by its managers, UPS is far and away the largest transportation company in the nation, with annual revenue of $17.5 billion, or twice that of its chief rival, Federal Express Corp. Its boxy brown delivery trucks have become a fixture in the American landscape. And its workers, hailed by customers as models of dependability, have accepted (if not always embraced) management's Prussian culture — finding consolation in $40,000-plus salaries, generous benefits and a handsome profit-sharing plan.

UPS, though, like much of the rest of corporate America, has been pushing to get even more productive. In recent months, it has rolled out a slew of new products and services: computerized tracking systems, bulk discounts on large shipments, higher limits on package weights and earlier and earlier "guaranteed arrival" times.

More to Haul

Customers love the changes. But inside UPS, the overhaul is causing problems, especially with the company's heavily unionized workers. The new measures require employees to haul more packages and move heavier loads, as well as spend more time on complicated deliveries, all without sacrificing their productivity. They are starting to rebel.

Employee lawsuits, federal fines and a recent walkout — the first nationwide strike in UPS history — have joined the company. In the past year alone, according to the company, labor troubles have cost UPS more than $100 million. And while it is still a financial powerhouse — earning $600 million last year, vs. $518 million in 1992 — labor leaders, industry executives and even some UPS managers say UPS could be headed for more costly showdowns.

A growing number of companies share the plight. Faced with increased competition, they are launching campaigns to raise productivity and provide additional services, only to run headlong into a recalcitrant work force. At American Airlines, flight attendants waged a strike last year in part over the carrier's move to reduce their numbers on larger aircraft. Workers at a General Motors Corp. plant in Shreveport, La., struck to protest a plan to speed up the assembly line and cut staff. Production speed in the meatpacking industry has more than doubled in recent years, prompting more safety fines and union organizing.

Balancing Act

"The issues at UPS are going to become more common as companies enter the productivity race," predicts William Morin, chairman of Drake Beam Morin, an employee counseling firm. "It's a very tough balancing act."

UPS acknowledges as much. "Our drivers are working as hard physically as we would want them to," says Kent "Oz" Nelson, chairman and chief executive. "We try to be careful not to be unfair and ask our people to do more."

Still, he and other UPS executives say, the need for more productivity is unavoidable. UPS says it is using new technologies and better planning to achieve that end without overloading employees. "What is getting more difficult is the variety of services and things they have to remember," says Mr. Nelson.

UPS always has demanded a lot from workers. Years back, a former chairman described UPS as a "cross between the Marine Corps and a Quaker meeting."

Traditional Virtues

That culture began with James E. Casey, a failed gold prospector, who founded the firm as a bicycle-messenger service in 1907. From his managers, Mr. Casey expected teamwork and humility. (Even now, Mr. Nelson, the chief executive, makes his own copies and answers his own phone.) From his people on the front lines, Mr. Casey demanded discipline, loyalty and intense effort — virtues for which UPS would reward them handsomely.

Today, UPS delivery drivers, organized by the International Brotherhood of Teamsters, earn between $40,000 and $50,000 a year, making them what the company and the union call the highest-paid truck drivers in the country. But the troops, as UPS proudly notes, earn it. With a battalion of more than 3,000 industrial engineers, the company dictates every task for employees. Drivers must step from their trucks with their right foot, fold their money face-up, and carry packages under their left arm. These considered slow are accompanied by supervisors, who cajole and prod them with stopwatches and clipboards.

Employees have accepted the system for decades, taking comfort in the salaries and chances for advancement. Promotion from within is gospel; virtually every manager began as a UPS driver or sorter. Mr. Casey, in a treatise called "Determined Men," noted, "You can't be a big man until you've shown competence as a small one." Employees who become managers get shares in UPS, which they can sell back to the company, though they usually don't dare to as long as they have career hopes. The price of the shares is set by the board each quarter.

UPS, meanwhile, has become the strongest force in the U.S. delivery business. With its 128,000 trucks and 458 aircraft, the company now controls more than three-fourths of the ground-parcel market in the U.S. and is a growing force in air-express with about a quarter of the business (roughly half as much as Federal Express), according to Colography Group Inc., an air-freight research firm in Marietta, Ga. Overseas, UPS is still a minor player but is growing its revenue at about 18% a year.

For all its success, UPS finds itself with nagging headaches. In the past, its steep labor costs could be offset in part by price increases. Today, price freezes are the industry norm, a consequence of heated competition from newcomer rivals such as Roadway Package Services, or RPS. That competition, in turn, means that UPS must continue to add products and services, and boost efficiency, to gain ground.

But doing so is generating considerable ill will inside the company. Last fall, for instance, UPS expanded its guarantee of 10:30 a.m. delivery, primarily for overnight letters, to most of the country. The rationale: Air-express packages had become an increasingly important part of the company's business — air revenue grew 15% last year to more than $3 billion — and UPS had to keep pace with Federal Express, which long has offered next-day delivery by 10:30 a.m.

But some drivers say the new program has posed problems. They now have to deliver their air packages first, then double back to cover their normal routes. Tom Saxton, a driver in Durham, N.C., says his delivery loads have jumped to about 220 packages a day from about 160 a few years ago, with more oversized and heavier ones. Mario Rojas of Kansas City, Mo., says he is delivering 30 to 40 air packets a day, compared with five or six a year ago. The drivers also say they are working heavy overtime, driving faster and taking less time on safety checks.

"The heavy day used to be Wednesday," Mr. Rojas says. "Now it's all week."

No Time to Chat

Robert Duncan, a UPS driver in Midway, Ga., says the extra work has forced him to be more brusque. One evening, Mr. Duncan was delivering a hobby kit to an elderly man who had to fetch his COD money. With the air deadline fast approaching, Mr. Duncan had to take the package back.

EXHIBIT 1

all kinds of names," Mr. Duncan recalls. "I felt bad, but I didn't want a supervisor chewing me out for missing the air deadline."

UPS's race into the electronic age also has raised temperatures.

In a bid to bring its plain-brown-wrapper service up to speed with Federal Express and others, UPS has spent more than $3 billion in recent years to update its technology. The biggest improvement is package tracing, a system in which each package is bar-coded and scanned at various delivery points. That has enhanced greatly the company's ability to pinpoint packages for customers, and most drivers say it has eliminated troublesome paperwork and timecards. But some refer to the system as an "electronic umbilical cord" that the company uses to monitor their productivity. UPS says that is not the case.

"Of course they're using it to track us," says Paul Hayes, a driver in Norwood, Mass. "They use everything they can."

New Services

Drivers also have had to become experts on the more than 20 new services and products the company has rolled out in recent months, whereas the company used to have just one. They have to be just as adept at, say, drawing up an air waybill to clear customs in Bulgaria as filling out a ground order to Omaha, Neb., and explaining it all to customers. As part of its aggressive marketing effort, UPS is also asking drivers to scout out users of Federal Express and other rival services and pass on sales leads.

"It's tough to make all your deliveries when they got us doing all these show-and-tells," says Bob Widawsky, a package driver in Manhattan.

UPS executives ascribe much of the labor friction to muscle-flexing by an embattled Teamsters leadership. Mr. Nelson says the worker complaints don't reflect so much an increase in the workload as in the degree of difficulty of many jobs. On the whole, he says, workloads have remained the same and even slipped somewhat because of time-saving technologies and a drop in residential volume. Productivity actually declined last year — domestic package volume fell 0.6% — while employment remained steady at 251,000.

But drivers have had to learn an array of codes and billing systems and follow computer-guided route plans. More and more packages have special handling and time-sensitive requirements, and even sorting-hub workers have more categories to remember.

As a result, UPS has beefed up its training. It is also hiring more skilled and college-educated workers. "It's a lot more thinking," says Dan Preble, manager of training. "So we've got a whole new breed."

That new breed also may be less tolerant of the company's work rules and demands. Frustrations boiled over last summer in one of the most bitter contract talks in the company's history. Teamsters demanded limits on driver supervision. At one point, the union introduced — and publicized — a study purporting to show that UPS employees scored in the 91st percentile of U.S. workers for job stress, while many suffered from anxiety, phobias or back strain. (UPS termed the report biased and unscientific.)

The contract finally was settled with several changes in working conditions, including a statement that management "shall not intimidate, harass, coerce or overly supervise any employee."

Worker strife even has extended overseas, where UPS has lost more than $1 billion in recent years. In Spain, drivers waged a costly one-month strike over the company's working conditions, and in France, several top executives bailed out of a local shipping company shortly after it was acquired by UPS. Culture clashes also occur: UPS's ban on beards, for instance, has roiled workers in Germany and Spain.

Back in the U.S., the courts and the federal government also have taken action. The Occupational Safety and Health Administration doubled its visits to UPS last year. In April, UPS paid $3 million to settle an OSHA complaint that it had inadequately provided for the safety of workers handling hazardous wastes. (UPS said it acted properly but paid the fine to avoid costly litigation.) In Seattle, UPS had to pay $12 million to more than 2,000 drivers last year after a judge ruled that UPS was forcing them to work through lunch.

Weight Limits Rise

Even pilots have entered the picture. In a report sent to UPS and Congress, their union, the Independent Pilots Association, alleged that the pilots fly under "dangerously or seriously impaired" conditions 15% to 33% of the time. UPS says it takes the issue seriously, but calls the report baseless.

Says Ron Carey, general president of the Teamsters and a former UPS driver: "It's a very strained relationship right now, much more so than ever before."

The strain was most visible in January when UPS, as part of an effort to capture more of the light-trucking market, raised its maximum weight to 150 pounds from 70. Drivers and sorters alike revolted, concerned they would hurt their backs and resentful that UPS hadn't raised the issue during contract talks. After midnight on Feb. 7, more than 12,000 UPS workers walked off the job, shutting down operations throughout the Northeast and South in the company's first nationwide strike.

The one-day walkout proved costly. UPS estimates it lost more than $180 million from added expenses and customer defections. It is suing the union for damages.

Meanwhile, workers are braced for even tougher demands. Drivers themselves say they are troubled by the growing number of RPS and Federal Express trucks passing by on their routes. "Whenever I see an RPS guy unloading his truck, I know those are packages we're losing," says Chris Pieneman, a veteran package car driver from Durham, N.C. "But you just wonder how much more they can squeeze

June 17, 1994

Re: California Public Utilities Commission Order Initiating Investigation and Rulemaking I.94-03-036, R.94-03-037

Dear Carriers, Shippers and Others:

My name is Edward J. Marnell. I am the principal owner of a highway common carrier operating mostly in Northern California under the name of Cal Pak Delivery, Inc. (Cal Pak). A large segment of my business is engaged in the over-the-road pickup and delivery of packages either individually or in shipments.

Most of you have received in the mail an Order Instituting Investigation and Rulemaking dated March 16, 1994 (Order) in the above referenced proceeding from the California Public Utilities Commission (CPUC), pursuant to ordering paragraph 11 and attachment B thereof. You will note in reading the Order that it makes no mention anywhere of United Parcel Service (UPS). Instead it makes reference throughout only to Integrated Intermodal Small Package (IISP) carriers. I mention this because nowhere in the order are you advised that UPS is the one and only IISP carrier in California. It is serious omission for the Commission to fail to disclose this most critical fact. Any respondent not aware of UPS' exclusive status will probably be unable to contribute anything meaningful to the proceedings objectives. This is why I write this letter.

Like many of you carriers my principal competitor is UPS. Also, like many of you I am and always have been willing to compete for business. However, thanks to a long series of preferential exemptions and favorable rulings granted to UPS by the CPUC, UPS has been able to dominate our industry. About four years ago, the Commission allowed UPS to make serious inroads into our business. UPS was allowed to engage in shipping packages in a new Hundredweight LTL service, without being required to meet the same rules we must comply with including the cumbersome bill of lading requirement. Cal Pak opposed this discriminatory treatment in a formal proceeding before the CPUC but was thrown out on a technical ruling rather than on the merits of my complaint.

More recently UPS intensely and dishonestly lobbied the legislature for a law which would free all of its operations from any economic regulation. A.B. 2015 was enacted by the legislature

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based on two misrepresentations made by UPS: first, that it could not compete with Federal Express (Fed Ex), exclusively an air parcel carrier, unless its entire business (including its all-ground, nonexpedited, low-rated standard service) were also freed from regulation; and, second, that all other LTL carriers would not be adversely impacted even though they remained regulated. Astonishingly, the California Trucking Association (CTA), to which many of you belong, supported the bill. This, to me, did not seem to be in your best interest.

At UPS' request, A.B. 2015 was passed as an emergency measure, where there was no emergency at all, with the Commission supporting the concept of completely freeing UPS from economic regulation. This legislation was special legislation passed for UPS' sole benefit. Not surprisingly, UPS is the only carrier qualifying under A.B. 2015. Cal Pak will shortly file a complaint with the Supreme Court challenging the constitutionality of this bill on the basis of discrimination. All of you who agree with me should contact your assemblypersons and senators calling attention to this midnight fraud. UPS is the only carrier benefiting from A.B. 2015. To add insult to injury, UPS took the final ounce out of the pork barrel when it also induced the legislature to hand it a gift of a million dollars a year in filing fees reduction.

Belatedly, in the captioned proceeding, the Commission has now recognized that in granting UPS this specially tailored political and economic favor, the legislature has "disrupted the competitive balance," an effect which the Commission now tells us was "unintended." In this proceeding the Commission has proposed some measures purporting to level the playing field. I believe these measures are woefully inadequate to deal with the real problem.

I truly believe that UPS poses a threat to all LTL carriers as well as to all shippers. UPS' freedom from regulation gives it the absolute power to cut a shipper off completely or to otherwise discipline those that displease or oppose it in any manner. As shippers know, this may be done in many subtle and unsubtle ways. Large shippers may be happy now with UPS' special deals, but remember, as UPS eliminates alternative LTL competitors, you will have nowhere to go. As this happens, UPS' power over you only increases.

Not only does UPS have huge economic dominance but, because of its power over government, it has consistently received competitively favorable treatment. UPS has frequently characterized me as a vexatious litigator. But in my mind, UPS should not have the competitive advantages afforded it by

government which has allowed it to develop into a monopoly. It has been and remains wrong. But UPS has now become an irresistible force both in the marketplace and in the halls of government.

In California UPS has never failed to get its demands met by commissions and legislatures. Recently, in a formal proceeding I challenged UPS' rate increases which UPS put into effect despite a Commission warning not to do so. The Commission found that the increases which were set forth in UPS' tariff were unlawful, ineffective and constituted an overcharge to all of its customers. Yet, despite these findings, UPS customers were not advised of this by UPS, as provided by General Order 148, Rule 9 b, or by the Commission. Furthermore, UPS has not even had its hands slapped, but rather, as of this date, it remains unpunished and so far is being rewarded for its unlawful conduct by being permitted to keep over $35 million of its customers money. It is clear that UPS has the absolute power to avoid and circumvent punishment which would be meted out to any other carrier in a nanosecond. The Commission has never been hesitant to require carriers to repay illegal overcharges. Yet, in UPS' case, the Commission does not seem able to act.

The only sanctions I know of that any agency of government thus far has ever had the courage to levy against UPS was the Federal Court in San Francisco where I exposed UPS' predation in several ways and won an antitrust case against it. Ask your attorney to get a copy of this lengthy but thorough opinion by U. S. Supreme Court Justice Tom C. Clark. It is cited as Marnell v. United Parcel Service of America, N.D. CA (1971), 1971 CCH Trade Cases, paragraph 73,761.

There is no question that UPS is an efficient and competent carrier. That's not my complaint. It is the political favoritism and homage which is invariably bestowed upon UPS. In this Investigation and Rulemaking proceeding we have the opportunity to speak. We should do so and do it forcefully, even though the chances of being heard are slim. It is clear to me that the CPUC's approach to the problem created by A.B. 2015 is not going to work. This proceeding, as structured in the order calling for comment, may take over a year. Contrast this with the two months it took UPS, with Commission support, to get A.B. 2015 passed as a rider to another unrelated bill. I believe that the action I suggest in my comments is much more in the right direction than is the Commission's. I enclose Cal Pak's comments and urge you to read it. If you agree with some of my comments, please let the Commission know your views. This may be the last opportunity for us to be heard.

Please write or call me if you want any information.

Sincerely yours,

Edward J. Marnell

Edward J. Marnell
President

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SURFACE TRANSPORTATION SUB COMMITTEE

JULY 20, 1994

STATEMENT OF LAWRENCE R. KNAPP
EXECUTIVE DIRECTOR OF M-CARTS
LANSING,, MICHIGAN

My name is Larry Knapp and I am Executive Director of Michigan Citizens Allied for Responsible Transportation and Safety (M-CARTS). This coalition represents approximately 200 Michigan trucking companies and other advocates of responsible trucking regulation.

These trucking companies employ close to 20,000 people, operate approximately 26,000 pieces of equipment, have an annual payroll of 225 million and pay Michigan taxes in excess of 50 million dollars every year.

S1491, Federal Aviation Administration Authorization Act of 1993, is currently under consideration. I understand that an amendment has been made that will prohibit all states from regulating intrastate commercial trucking.

The Michigan public is not dealing with or subjected to a 1933 law. State agencies in cooperation with the Michigan legislature have reviewed motor carrier regulation on an ongoing basis since the 1960's. At that time, the Michigan Public Service Commission (MPSC) conducted an extensive cost study employing the A.T. Kearney Co., resulting in a cost based rate schedule. In 1978, the MPSC commenced a study on the ongoing impact of intrastate motor carrier regulation. The study

became the springboard for a major revision of the state's Motor Carrier Act which became law on December 28, 1982. These changes came about through the efforts of a committee comprised of representatives of government, large and small shippers, every type of motor carrier, shipper and carrier organizations, chambers of commerce and interested individuals.

Since 1982, at least three separate bills have been introduced in the Michigan House and Senate that proposed additional changes ranging from minor, generally acceptable amendments, to total deregulation. In 1989 and 1990 House Bill 4735 was under consideration. It proposed substantial deregulation. At lease seven public hearings were held at various locations throughout the state. Failing to generate sufficient public support, the bill was not reported out of the House Transportation Committee.

In the 1991-92 legislative session, S325 was debated and once again a bill failed to generate enough support for passage. Extensive research on this proposal produced data that was the basis for S581 in the 1993-94 session. The Michigan legislature, after significant debate, discussions, and hearings, recently fine-tuned Michigan's Motor Carrier Act for the first time since 1982, through the passage on December 24, 1993 of significant amendments. That bill eased regulation for a segment of Michigan's motor carrier industry, while maintaining entry and rate controls on Michigan's common motor carriers. That bill became Public Act 352 of 1993, when it was signed into law by Governor John Engler on January 13, 1994. The bill was supported by all the major manufacturers, labor organizations and

trucking companies. Only a very few remained in favor of intrastate deregulation. Thousands of man hours were spent in the drafting of the final version.

The point of this historical review is two fold. First of all, Michigan has not sat back and retained 1930's style regulation but has been very active and aware of changing times. Secondly, the Michigan legislature has spoken loud and clear on what they believe is best for Michigan. After all that has been accomplished, we do not understand why any further change affecting intrastate commerce is necessary and why states rights are being preempted by the Federal government in an area of local concern and jurisdiction.

The Intermodal All-Cargo Air Carrier amendment will exempt all carriers meeting this definition (and we submit that, in most versions of the bill, it will be very easy for entities to concoct operations which bring them within the exemption) to defeat all intrastate application of rules to them (even environmental and labor statutes). Moreover, the amendment, in one form, would even remove application of the Interstate Commerce Act and, potentially, even labor and environmental laws and regulations of the federal government from application to Intermodal All-Cargo Air Carriers. This is an ill-conceived piece of special interest legislation designed to remove regulatory controls of many types from a few of this nation's largest motor carriers. It should not be allowed to occur, under any scenario.

It is also incongruous that such a sweeping piece of legislation actually directed at trucking operations should be tacked onto a bill concerning airport facilities. The amendment would have sweeping implications for the nation's truckers, and deserves

full hearing and consideration on its own right, in the full light of day. Instead, it is a "stealth" proposal, tacked on to a disparate piece of legislation the subject matter of which has nothing to do with intrastate motor carrier deregulation.

It is true, of course, that the amendment is backed by two of the nation's largest transportation entities, Federal Express Corp. and Untied Parcel Service, Inc. We submit that this support does not, in and of itself, constitute a finding that the amendment is in the public interest, however. All of the legal implications of this amendment need to be thoroughly studied, including its impact on organized labor, before its passage should even be considered.

The members of M-CARTS respectfully request your opposition to this amendment. The future of a good many of the 2,300 authorized Michigan intrastate carriers and their 20,000 employees and families could be seriously jeopardized.

STATEMENT OF GREYHOUND LINES ON PACKAGE EXPRESS INTRASTATE DEREGULATION

Mr. Chairman and members of the Subcommittee:

I am Theodore Knappen, Greyhound's Government Affairs Representative, and I appreciate the opportunity to be here today to discuss with you the intrastate deregulation of motor carriage of property, which in the case of intercity bus companies, means package express. This is the second time in recent years that I have testified before this Subcommittee on this issue and my message is the same -- Greyhound supports the intrastate deregulation of all motor carriers of package express, including all intercity bus companies. Greyhound strongly opposes selective intrastate deregulation because it is not only bad public policy, it also could have a devastating effect on intercity bus service, particularly rural bus service.

The intercity bus industry provides the nation's only network of low cost, intercity public transportation of passengers. In addition, the industry provides service to roughly 6000 communities, many of which have no other form of public transportation.

A vital part of this rural bus service is the package express service that is provided along with the passenger service. More than half of the packages Greyhound carries have either a rural origin or destination.

For many rural communities, bus package express service is their only regularly scheduled, daily service. Bus service is literally the lifeline for these communities as it carries many essential commodities ranging from blood to farm machinery replacement parts, to and from these small towns.

Despite its importance, rural bus service and bus service generally has declined in recent years as it has experienced dramatically expanded low cost airline competition as well as automobile usage. Greyhound and other intercity bus companies are struggling to preserve as much intercity bus service as possible. The industry's ability to do so is significantly impacted by its ability to retain its package express business, which on many routes, particularly in rural areas, provides the incremental revenue that enables bus service to continue.

It would be a disaster for rural bus service if the bus industry's package express competitors, particularly UPS, were freed from intrastate regulation while the bus industry was not. Can you imagine what UPS or any other competitor could do to bus companies' package express business if it could change its rates and service patterns overnight while its bus competitors had to wait 7 months to respond?

Clearly there would be little, if any, bus package express business left. That is why bus companies must be fully included in any

package express deregulation bill.

Intrastate regulation of bus package express was partially removed by the Bus Regulatory Reform Act of 1982. The BRRA authorized intrastate passenger and incidental package express operating authority on all interstate routes operated pursuant to a certificate from the Interstate Commerce Commission. The BRRA also provided a mechanism for the appeal to the ICC of state rate and exit decisions involving intrastate passenger and incidental package express service on interstate routes.

Although these preemption provisions were quite helpful in enabling bus passenger and package carriers to compete more effectively on an intermodal basis, they still left bus carriers encumbered by a dual, time consuming, and expensive regulatory process.

On the entry side, the remaining intrastate regulation has produced some damaging anomalies such as the Texas rule that precludes Greyhound from providing supplemental package express service in trucks or vans, thus limiting our ability to provide package express service in rural areas when it is most needed.

With regard to rates and exit, the ICC has eventually upheld the bus carrier's position in almost every intrastate rate and exit case appealed to it, but the dual regulatory process often takes more than 7 months. During this time, the bus carrier is prevented from making the change that market conditions dictate.

Greyhound favors removal of the remaining intrastate restrictions for passenger and incidental package express service provided by a carrier as part of its interstate service. These restrictions serve no purpose except to prevent intercity bus carriers from maximizing their intermodal competitive capacity. The intercity bus industry must have that full capacity to survive. On the passenger side, Greyhound finds itself in daily price competition with federally subsidized Amtrak fares, as well as discount air fares. On the package side, the competition from UPS and other intermodal package express carriers is increasingly intense.

At the very least, state regulation of package express carried by bus companies should be removed to the same extent that Congress removes such regulation of package express carried by any other companies. This brings me to S. 1491, which amends the Airway and Airport Improvement Act and which exempts from all state regulation the motor carriage of property, including packages, by any "intermodal all-cargo air carrier".

This provision clearly covers UPS, Federal Express, and many large motor carriers of property. It is much less clear that it covers package express carried by intercity bus companies. The question is whether intercity bus companies fall within one of the two specified categories of "intermodal all-cargo air carrier".

The first category is "an indirect cargo air carrier" which DOT has defined as one that "undertakes to engage indirectly in air

transportation of property" and uses a direct or indirect air carrier to do so. Assuming that there has to be some substantial undertaking, it is questionable whether any bus company would fall within this category now, and it is entirely unclear as to what level of new activity would be required in order to meet the test.

The second category is any other carrier that utilizes an air carrier at least 15,000 times annually. If the term "utilizes" means using air carriers like FedEx for intra-company communications, then Greyhound would probably qualify based on its 1993 usage. But this is problematic for two reasons. First, it is not at all clear that "utilizes" would be defined that broadly, and second, no other bus company would qualify under this test.

Greyhound believes that the package express service of all bus companies should have the same exemption contemplated for UPS and the other big package express companies. It would be difficult, if not impossible, for all bus companies to qualify under the existing language of S. 1491.

In order to make it clear that all bus companies enjoy the same exemption as motor freight carriers, Greyhound recommends adding at the end of the new subparagraph 101(25)(B)(ii) of the Federal Aviation Act created by S. 1491, the phrase, "or (III) is an intercity bus carrier providing the transportation described in section 105(a)(4)".

This or comparable language specifying that the package express service of intercity bus carriers is exempt from intrastate regulation is essential if intercity bus companies are to be treated equitably. Without this clarifying language, there is a substantial threat to the viability of package express service by intercity bus companies and thus to the remaining rural bus service.

Thank you for the opportunity to present Greyhound's views on this important issue. I would be happy to answer any questions that you might have.

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SURFACE TRANSPORTATION SUB COMMITTEE

JULY 20, 1994

STATEMENT OF LEE R. KUNDTZ
PRESIDENT, ALVAN MOTOR FREIGHT, INC.
KALAMAZOO, MICHIGAN

My name is Lee R. Kundtz. I am President and Chief Operating Officer of Alvan Motor Freight, Inc. My business address is 3600 Alvan Road, Kalamazoo, Michigan 49001. I have been President of Alvan since 1988. I have worked for transportation companies for the past 32 years, and prior to that I purchased transportation service while working for a shipper.

Alvan Motor Freight is a midwest regional general commodity common carrier providing service intrastate in Michigan and Indiana, and interstate between Michigan, Indiana, Illinois, Wisconsin and Ohio. Alvan employs 365 people with an estimated payroll for 1994 of $24 million including wages and fringe benefits (comprehensive health care, pension, vacations and holidays). We own and operate 191 tractors and 519 trailers. We project revenues of $38 million in 1994.

I am making this statement in opposition to Section 211 of Senate Bill 1491, the All-Cargo Carriers Exemption to the Airport Improvement Program Bill. Why a far-reaching trucking deregulation bill that will have a major impact on over 40,000 motor carriers is part of an aviation funding bill is beyond comprehension. This amendment will only benefit a handful of very large carriers and very quickly lead to total intrastate trucking deregulation without a comprehensive review of the impact on the

public, particularly small communities and shippers, the employees of motor carriers, as well as the most likely negative impact on safety and energy consumption. In my opinion, enactment of this legislation in its present form would create a substantial amount of overcapacity (more trucks hauling less freight) and would be devastating to Alvan and other small carriers, and result in the loss of good paying jobs including comprehensive fringe benefits as companies close their doors or are forced into bankruptcy.

The preponderance of Alvan's intrastate revenue is earned in Michigan, which has regulated its trucking industry for many years. The Michigan motor Carrier Act was amended by the state legislature in 1982 in response to interstate regulatory reform, and again in 1993 after extensive hearings, the Michigan legislature overwhelmingly approved revisions that eased entry and rate regulation of contract motor carriers, provided for more flexible pricing options for common carriers, and established certain safety related requirements for motor carrier authority applications. In addition it was determined that filed rates including collectively filed rates with Public Service Commission overview were in the public interest in order to prevent undue discrimination between large and small shippers and to insure service to small communities. There is no need for the federal government to preempt Michigan intrastate regulations now that the State Legislature has reviewed all intrastate issues and adopted an updated Motor Carrier Act.

Today, there are over 2,300 active carriers handling Michigan intrastate business. The Michigan intrastate market is very competitive providing shippers with

a range of carriers and services from which to choose. In my opinion there is an overcapacity of trucks relative to the amount of freight shipped. Adding more carriers will not create more freight but instead will result in chaos. Allowing the nations largest transportation companies into Michigan intrastate commerce will result in a temporary price war and hasten the demise of many small Michigan carriers like Alvan in favor of the large nationwide companies. The savings, if any, to shippers will only be temporary. With the elimination of many small and medium sized carriers who handle the bulk of the interline traffic, reasonable rates and service to small businesses and small communities will suffer. It is interesting to note that despite the holding of nationwide interstate authorities, many carriers interline freight with some of the small Michigan carriers rather than perform the total service themselves. One can conclude that the grant of broad authorities does not insure a full service.

Further adding more trucks would mean more trucks hauling less freight unnecessarily increasing fuel consumption and jeopardizing safety. Profits would decline or be eliminated, most likely resulting in a cutback in maintenance expenditures and impede the ability of carriers to purchase and finance new equipment which would otherwise provide for improvements in fuel consumption and pollution control.

Michigan intrastate trucking regulation has fostered the development of a versatile and responsive trucking industry. Michigan common carrier rates are fair and equitable and are subject to review by the Michigan Public Service Commission. Alvan takes its common carrier service obligation seriously by serving all authorized

points, both large and small. The Michigan regulatory system has for years assured all businesses and persons equal treatment, just and reasonable rates and assurance that small businesses and small communities receive access to essential transportation service.

Alvan Motor Freight urges the sub-committee to take the following action relative to Section 211 of Senate Bill 1491:

1. Provide time for more extensive hearings on the issue of deregulating trucking.

2. Commission a study to review and analyze the impact of Section 211 on the public, carrier employees, safety and energy conservation.

The importance of this issue should not be minimized. Millions of workers providing intrastate transportation and their families deserve to have this issue fully explored. It is not right that a few major carriers each generating over $1 billion in annual revenue should dictate the outcome regarding intrastate regulation.

For further information regarding Alvan's operations, please see attached Appendix A.

A DESCRIPTION OF THE BUSINESS OF ALVAN MOTOR FREIGHT, INC.
KALAMAZOO, MICHIGAN

Alvan Motor Freight is primarily a general commodity common carrier holding authority from the Michigan Public Service Commission, the Public Service Commission of Indiana, and the Interstate Commerce Commission. Alvan also conducts some operations as a contract carrier.

Alvan services the states of Michigan and Indiana on a regular basis in interstate and intrastate commerce. Alvan also provides direct service to the states of Ohio, Wisconsin, Illinois, and parts of Kentucky, Pennsylvania and West Virginia. Service is also provided through to Canada on an interchange basis in Detroit. Alvan, on an interstate interline basis, also delivers freight originating at points in other states in addition to those listed, on shipments tendered to Alvan by other motor carriers. Similarly, Alvan picks up freight destined to points in other states, which Alvan tenders to other motor carriers at various exchange points.

Alvan Motor Freight has been in business since 1941. Alvan was operated as a sole proprietorship under the name of Albert Van Zoeren. Mr. Charles A. Van Zoeren and his wife Joan are the current owners of the company.

The acquisition of authority by Alvan has been a gradual and progressive development. In general terms, Alvan's operations originally were confined to the southwestern quadrant of the lower peninsula of Michigan. In 1978, Alvan purchased

existing operating authority from Keyline to serve more northerly points and east into Detroit. In early 1985, Alvan received an extensive grant of common carrier authority to expand operations to include all of the lower peninsula except the northwest quadrant. Authority for the northwest quadrant was granted in 1992. And in 1990, Alvan expanded its interstate operations into Illinois and Indiana with the purchase of Daum Overnite Express.

Alvan is serving the shipping public as a common carrier to the full extent of the authority granted. Alvan takes its common carrier obligation to serve very seriously, and fulfills that obligation.

Alvan has terminals in the following locations: Chicago, Illinois; Indianapolis, South Bend and Fort Wayne Indiana; Toledo, Ohio; Alpena, Detroit, Grand Rapids, Jackson, Messick, Kalamazoo and Saginaw, Michigan. Detroit, Kalamazoo, and Grand Rapids are open 24 hours a day, from midnight Sunday until Saturday morning. The other terminals are open during normal business hours, which generally extend from 7:00 a.m. in the morning until about 8:00 p.m. in the evening.

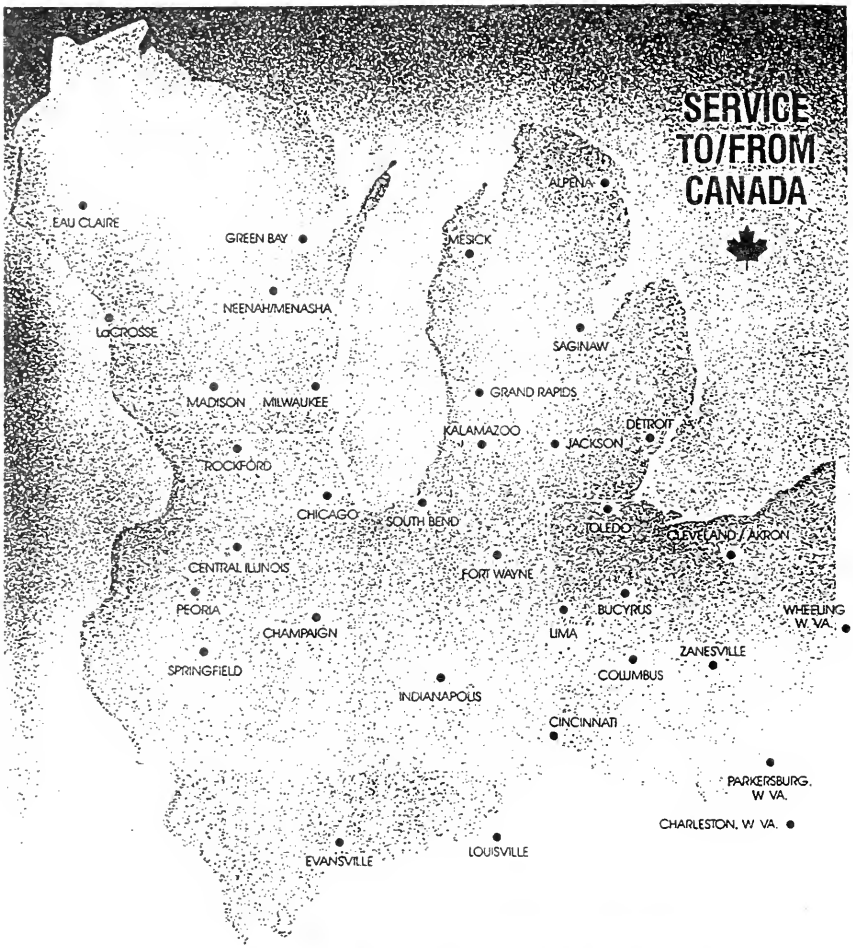
Alvan's current equipment list shows 191 tractors and 519 trailers. Certain of the tractors are assigned to a pick up and delivery function, while other tractors are assigned to a linehaul function. The linehaul tractors are utilized between the various terminals, while the pick up and delivery tractors would be dispatched out of particular terminals each day to make pick ups and deliveries at areas which are the responsibility

of each particular terminal.

Alvan provides closed van trailers which range in length between 45 feet and 53 feet. The 53 foot long, 102 inch wide closed van trailers provide the shipping public with additional loading capacities when compared to the 45 foot 96 inch wide closed van trailer which was once standard in the industry. Alvan provides the different lengths of trailers, in order to meet the varying demands of the shipping public.

At the present time, Alvan employs 365 people. There are pick up and delivery drivers and helpers, dockworkers, linehaul drivers, administrative and sales people, and mechanics.

Nearly 53 percent of Alvan's revenue in calendar year 1992 and forty percent of Alvan's revenue in 1993 was derived from intrastate commerce. Alvans total operating revenue in 1992 was $33,337,748 and its operating ratio was 93.4 percent. Alvan's operating revenue for 1993 was $35,767,710 and its 1993 operating ratio was 95.5 percent.



SERVING MICHIGAN, ILLINOIS, INDIANA, OHIO, WISCONSIN AND CANADA

plus bordering cities in Kentucky & West Virginia

ALVAN MOTOR FREIGHT, INC.
3600 ALVAN ROAD
KALAMAZOO, MI

SUMMARY OF EQUIPMENT
February 28, 1994

TRAILERS

217	45' OVERHEAD DOOR	
	Model Year 1978	6
	Model Year 1981	6
	Model Year 1987	25
	Model Year 1988	30
	Model Year 1990	50
	Model Year 1991	50
	Model Year 1993	50
85	48' SWING DOOR	
	Model Year 1984	1
	Model Year 1985	4
	Model Year 1986	69
	Model Year 1987	2
	Model Year 1988	9
50	53' SWING DOOR	
	Model Year 1993	50
130	50' SWING DOOR	
	Model Year 1984	90
	Model Year 1988	40
5	45' TRI-AXLE	
	Model Year 1979	5
10	50' TRI-AXLE	
	Model Year 1985	10
10	48' OVERHEAD DOOR	
	Model Year 1991	10
6	28' PUP-OVERHEAD DOOR	
	Model Year 1987	6
6	CITY TRAILERS	
	Model Year 1981	1
	Model Year 1980	3
	Model Year 1978	2

TRACTORS

91	THREE AXLE	
	Model Year 1984	7
	Model Year 1985	8
	Model Year 1987	10
	Model Year 1988	16
	Model Year 1989	20
	Model Year 1991	15
	Model Year 1993	15
100	TWO AXLE	
	Model Year 1985	11
	Model Year 1986	11
	Model Year 1987	10
	Model Year 1988	48
	Model Year 1991	20

ALL 45' ARE 96" WIDE
45' TRI-AXLE ARE 96' WIDE
50' TRI-AXLE ARE 102' WIDE

ALL 48', 50', AND 53' ARE 102" WIDE EXCEPT FOR THE 4 1985 45' TRAILERS

TOTAL TRAILERS 519
AVERAGE MODEL YEAR . . . 1988

TOTAL TRACTORS 191
AVERAGE MODEL YEAR . . . 1988

NAM National Association of Manufacturers

MANUFACTURING MAKES AMERICA STRONG

TESTIMONY ON BEHALF OF
THE NATIONAL ASSOCIATION OF MANUFACTURERS

ON INTRASTATE DEREGULATION OF MOTOR CARRIERS

By
NORMAN LANGBERG, DIRECTOR OF LOGISTICS
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ATLANTA, GEORGIA

Before the
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

JULY 20, 1994

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Mr. Chairman, members of the subcommittee, thank you for the opportunity to present the views of the National Association of Manufacturers (NAM) regarding the intrastate regulation of motor carriers. My name is Norman Langberg. In addition to serving as chairman of the NAM Transportation Subcommittee, I am director of logistics, pulp and paper group, Georgia-Pacific Corporation (G-P), and also vice chairman of the Transportation Committee for the American Forest and Paper Association.

The NAM is a voluntary business association of more than 12,000 companies, large and small, located in every state. Members range in size from the very large to more than 8,000 smaller manufacturing firms, each with fewer than 500 employees. The NAM is affiliated with an additional 158,000 businesses through its Associations Council and the

National Industrial Council. NAM member companies employ 85 percent of all manufacturing workers and produce more than 80 percent of the nation's manufactured goods. One of the nation's oldest employer associations, the NAM will celebrate its centennial anniversary in 1995.

Georgia-Pacific Corporation is one of the world's leading manufacturers and distributors of building products and pulp and paper. Georgia-Pacific employs approximately 50,000 people at more than 400 facilities in the United States.

The NAM has long advocated federal preemption of intrastate movements of interstate motor carriers and shipments. Just as the general regulation of trucking companies began as a method to dampen the industry's competitive position with railroads, so too states started regulating motor carriers in order to protect in-state trucking interests from out-of-state competition. This anticompetitive system has created inefficiencies and hindrances to productivity that spill across state boundaries and serve as a drag on the national economy.

Since the 1991 Ninth Circuit Court of Appeals ruling in *Federal Express Corp. v. California Public Utilities Commission*, 936 F.2d 1075, it was only a matter of time before the various interests sought a national solution such as that found in Section 211 of the Senate version of H.R. 2739, the Aviation Infrastructure Investment Act (hereafter "Section 211"). The decision created a disparity in the treatment between intermodal package carriers dependent on whether the corporation was covered principally by the Motor

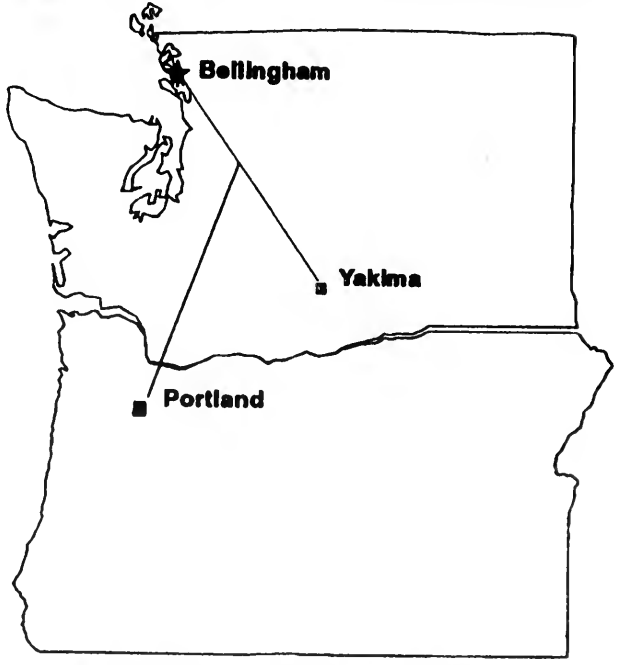
Carrier Act of 1980 or the Airline Deregulation Act. The NAM appreciates that there was Senate agreement to cover as many intermodal carriers as possible, and supports the current language of Section 211. The association believes firmly, however, that the conferees should expand on a good proposal and include all motor carriers, whether or not they ship or forward any packages by air.

Through numerous oversight and legislative hearings over the past ten years, a solid record has been established in favor of preempting state regulation of interstate motor carriers and in-state movements of interstate commerce. I will not take this subcommittee's time by reporting hundreds of inequities. But I would like to make two important points.

The first point is that these inequities are real and they are still happening. This causes Georgia-Pacific an estimated $5 million in additional freight charges. One example: Georgia-Pacific manufactures pulp and tissue products in Bellingham, Washington. The cost to move our products from Bellingham, Washington, to Yakima, Washington (229 miles), is $728.00. The price to move the same product from Bellingham, Washington, to Portland, Oregon (262 miles), is only $428.00. (See attached map on next page.)

The second point I would like to make is that more than 40 states continue to regulate intrastate trucking. Most have sizeable bureaucratic machinery in place to manage awarding of operating authorities, rate levels, and various administrative procedures. This entire

WASHINGTON INTRASTATE FREIGHT COSTS VS. COMPARABLE INTERSTATE FREIGHT COSTS



BELLINGHAM, WA TO YAKIMA, WA - 229 MILES - $728

BELLINGHAM, WA TO PORTLAND, OR - 262 MILES - $428

process causes enormous inefficiency and cost to manufacturers even when the rate levels are not discriminatory.

For instance, Georgia-Pacific operates a corrugated box plant in Memphis, Tennessee. Two years ago, we made the business decision to outsource its small delivery fleet to Schneider Trucking. Schneider is an outstanding company that operates throughout the United States. Its reputation for safety and service is beyond question. Schneider had to hire an attorney and appear before the Tennessee Public Utility Commission with supportive witnesses to seek authority to haul G-P boxes from Memphis to destinations in Tennessee. Early this year we made a similar decision at G-P's Lebanon, Tennessee, facility. Once again, we selected Schneider as our carrier. Operating authority in Tennessee is shipper- and origin-specific, so Schneider had to repeat the entire process to be awarded the authority to haul intrastate movements out of our Lebanon plant.

This is not a Tennessee issue, a Georgia-Pacific issue, or a Schneider issue. In Cincinnati, Ohio, and Circleville, Ohio, we are replacing our private fleet with J.B. Hunt. We are undergoing a very similar process. Even states that do not have restrictive practices have the bureaucracies in place that restrict our nation's ability to efficiently and economically transport its goods in intrastate commerce.

Both Georgia-Pacific and the NAM sympathize with the arguments of public utility commissioners that they should be able to ensure safe operations of motor carriers under

their jurisdiction. There has never been, however, any correlation established between economic regulation and safe operations. Indeed, to the extent that any statistically valid evidence exists, a November 1987 joint study by the California Highway Patrol and the California Public Utilities Commission found no relationship. There is, however, a correlation between state action and safety, as the study provides a stark contrast in the number of truck accidents to inspections: the higher the number of inspections, the lower the accident rate and vice versa. The money that states spend on bureaucrats and paper shuffling would be better used on increasing the number of inspections.

Incidentally, the same argument holds with respect to the current dispute over funding for motor carrier functions at the Interstate Commerce Commission (ICC). Although the focus of this hearing is not on the funding issue, in a sense the two efforts are interrelated. In separate votes on the same day (June 16), both Houses of Congress sent strong messages expressing a resolve that the motor carrier regulatory scheme is in dire need of reform. On the House side, debate focused on the oft-repeated "silliness" and "antiquated" ICC regulations governing trucking. As you know, the NAM has long opposed the continuation of tariff-filing requirements and entry review of more than financial fitness and safety considerations. Tariff-filing and other unnecessary ICC requirements are an antediluvian concept in a post-command-economy world.

The NAM strongly urges support for the efforts of Senator James Exon (D-NE) to find a reasonable solution for ICC funding. After careful consideration, the NAM

Transportation Subcommittee recently voted to support any efforts that would eliminate wasteful and unproductive activities of the ICC, while preserving its ability to carry out necessary functions. S. 2275, the Trucking Regulatory Reform Act, meets this mandate. The NAM recognizes the difficulty in making appropriate legal changes with respect to the Staggers Act and the Negotiated Rates Act that elimination of ICC funding would entail. These and other functions should be considered thoughtfully, as called for by S. 2275.

The other significant action occurring on June 16 was Senate passage of Section 211. As I indicated above, the current language of Section 211 is acceptable to the NAM. The association believes it would contribute greatly to increasing productivity, provide increased choices for shippers and lower shipping rates. Still, if the language were broadened these benefits would increase even further.

Given that there is no reason to continue to allow states to protect in-state carriers from national competition, it would make sense for Congress to create a perfectly level playing field for all motor carriers regardless of intermodal operations. Not to do so, however, raises several caution flags that the subcommittee and the conferees should consider seriously as reasons to broaden the provision.

Of utmost concern to the NAM is the potential effect on small manufacturers. Who is to say what might happen to a small business in West Virginia or Minnesota several years from now which dealt with a carrier that should have been regulated because it only made

14,500 shipments by air in a given year, yet operated on a state-deregulated basis? Or a carrier that intended to make 20,000 air shipments but for whatever reason ceased operations prior to meeting the 15,000 air packages threshold? The NAM raised similar concerns about retention of federal tariff-filing requirements in 1980, and repeatedly asked Congress to forestall the impending negotiated rate problem before it mushroomed. It took a full-scale crisis before this issue was resolved, however. Certainly, Congress would not want to repeat this scenario.

Simple billing could become a nightmare for small businesses as well. Will there be different types of bills of lading for regulated versus non-regulated carriers in states that continue to engage in economic regulation of every carrier possible?

In addition, the current language would put small private carriers at a disadvantage. Many small businesses have operating authorities for vans, trucks and other vehicles for delivery or servicing purposes. Larger private carriers would be able to lease vehicles and earn additional revenue through backhauls, but small companies not making 15,000 air shipments a year would be denied this entrepreneurial opportunity.

The NAM hopes that these questions will not compel members to oppose enactment of Section 211. Rather, these concerns are mentioned as further reasons for including the full breadth of motor carrier operations under Section 211. The potential monetary benefits of the provision becoming law total in the billions. Although the exact amount depends on

which study one uses, there is a strong consensus among scholars who have explored this issue that the current regulatory scheme wastes resources and should be reformed. The subcommittee has been presented with a plethora of such studies over the years.

The introduction of numerous bills dealing with motor carrier reform demonstrates a desire to once and for all finish the job begun in 1980. There is little reason to wait for another Congress since this subcommittee and committee have repeatedly explored this topic, support for which gains with each additional hearing. Opposition is limited to those who believe they benefit from the status quo, the numbers of which are rapidly dwindling as demonstrated by the recent vote of the American Trucking Associations in favor of Section 211. The subcommittee should recommend to the conferees that they support inclusion of Section 211 in the conference report for H.R. 2739, but in a form that provides as much opportunity for competition as possible. It should also work for adoption of S. 2275 as a compromise on the issue of ICC funding.

EXECUTIVE SUMMARY

The National Association of Manufacturers supports inclusion of Section 211 of H.R. 2739, the Aviation Infrastructure Investment Act, as passed by the Senate. The NAM strongly urges the subcommittee to work with the conferees to broaden the language to include all motor carriers, however, in order to avoid unintended consequences. The NAM also expresses its support for S. 2275, the Trucking Regulatory Reform Act, as a reasonable compromise on the issue of funding for the Interstate Commerce Commission.

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

SURFACE TRANSPORTATION SUBCOMMITTEE
OF
PUBLIC WORKS AND TRANSPORTATION COMMITTEE

* * *

HEARINGS ON THE SENATE AMENDMENT
PREEMPTING STATE REGULATION OF
SURFACE TRANSPORTATION (S.1491)

FEDERAL AVIATION ADMINISTRATION
AUTHORIZATION ACT OF 1994 (H.R. 2739)

STATEMENT OF WILLIAM J. LAVELLE ON BEHALF OF 19 PENNSYLVANIA INTRASTATE MOTOR CARRIERS IN OPPOSITION TO THE SENATE AMENDMENT PREEMPTING STATE REGULATION OF SURFACE TRANSPORTATION (S.1491)

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STATEMENT OF WILLIAM J. LAVELLE ON BEHALF OF 19 PENNSYLVANIA INTRASTATE MOTOR CARRIERS IN OPPOSITION TO THE SENATE AMENDMENT PREEMPTING STATE REGULATION OF SURFACE TRANSPORTATION (S.1491)

I. IDENTITY OF OPPOSING MOTOR CARRIERS

My name is William J. Lavelle. I am a partner in the law firm of Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219. The firm has represented motor carriers for over 40 years. It has been authorized to submit this statement on behalf of the following Pennsylvania intrastate motor carriers (referred to hereafter as "opposing motor carriers"):

Name	Location
C. D. Ambrosia Trucking Co.	Edinburg, PA
Barber Trucking, Inc.	Brookville, PA
Brocious Trucking, Inc.	Brockway, PA
Bulk Transportation Services, Inc.	Mineral Point, PA
W. F. Burns Trucking, Inc.	Ruffs Dale, PA
Reid J. Cavanaugh	Connellsville, PA
General Delivery, Inc.	Fairmont, WV
John S. Jerich, Jr., Inc.	Butler, PA
McClymonds Supply & Transit Co., Inc.	Portersville, PA
McQuaide Trucking, Inc.	Johnstown, PA
P & B Transportation, Inc.	Apollo, PA
PJAX, Inc.	Pittsburgh, PA
Perfetti Trucking, Inc.	Blairsville, PA
R & W Transportation, Inc.	McKeesport, PA

Homer R. Sleek & Sons, Inc.	Johnstown, PA
Taylor Services, Inc.	Blairsville, PA
David Tesone Trucking, Inc.	Gibsonia, PA
Ward Trucking Corp.	Altoona, PA
A.D. Weaver Service, Inc.	Export, PA

All of the above-listed motor carriers are authorized by the Pennsylvania Public Utility Commission to transport property between points in Pennsylvania. They include general freight and specialized carriers including bulk carriers and steel haulers. All of the carriers would be considered small companies by comparison with the companies that are supporting passage of the Senate Amendment. They request that this Statement, which has been distributed to the Subcommittee and other interested parties, be incorporated in the record of these proceedings.

II. POSITION OF OPPOSING MOTOR CARRIERS

The motor carriers shown above strongly oppose enactment of the Senate Amendment. The Amendment would totally preempt state regulation of rates, routes and services of any "Intermodal all-cargo air carrier" which transports property, pieces, parcels or packages (except household goods) wholly within a single state by aircraft or by motor vehicle regardless of whether or not the property has had or will have a prior or subsequent movement by air. It would have a devastating effect on the motor carrier industry generally and more specifically on these companies, their employees and the many communities in

Pennsylvania which they serve on a daily basis, particularly small, out-of-the-way villages and towns.

There is no shortage of intrastate motor carrier service in Pennsylvania. Likewise there is no absence of rate competition or innovative service. There is, however, a strong and financially stable intrastate trucking industry due in no small part to the regulatory efforts of the Pennsylvania Public Utility Commission (Pa. PUC) during the past 60 years.

This stability is now in grave danger of being undermined by this Senate Amendment. The negative repercussions if it becomes law will be felt not only in the motor carrier industry in Pennsylvania and other states but throughout American society generally. The opposing motor carriers want to make it clear that they are not against change and welcome wholeheartedly any new ideas or methods which will improve the industry and its capability to provide the highest quality service to the shipping public. Unfortunately, this "private" legislation sponsored by the giants of the motor carrier industry, and heretofore largely cloaked in secrecy, will benefit those few at the expense of thousands of small to medium-size motor carriers throughout the nation that provide vital services within each state.

III. STATE REGULATION OF INTRASTATE TRANSPORTATION SERVICE SHOULD NOT BE ELIMINATED WITHOUT ADEQUATE HEARINGS AND THE USE OF EQUITABLE PROCEDURES

The Senate Amendment is ill-conceived, grounded on false premises and being rushed to judgment with little or no investigation, deliberation or regard for the consequences. The opposing motor carriers herein request that the Subcommittee step back from this legislation and allow sufficient time for a thorough review of all of the issues.

This Amendment was passed by the Senate on June 16, 1994 with no prior notice to the public, no committee or subcommittee hearings to receive public input and without deliberation or thorough evaluation of the consequences. Other than those motor carrier interests that were instrumental in lobbying for passage of the Senate Amendment, the motor carrier industry was unaware of this pending legislation. Certainly, no small intrastate motor carrier would have had any reason to suspect that continued state regulation of the motor carrier industry was at stake when the U.S. Senate considered an airport appropriations bill.

No precipitous action should be taken by Congress which would so disrupt the intrastate motor carrier industry without a thorough investigation of all of the issues and ramifications. The passage of the Senate Amendment and the scheduling of this hearing before the Surface Transportation Subcommittee have occurred so unexpectedly and at such a rapid pace that none of the affected parties including the members of the House and

Senate have had an opportunity to fully evaluate this legislation. The radical changes in transportation policy which would result from enactment of the Senate Amendment should not be pursued without careful deliberation by Congress following receipt of all available information from the public which will be affected.

Each of the opposing motor carriers will be directly and adversely affected by enactment of the Senate Amendment. If they had been aware of the Amendment they would have submitted individual statements to the appropriate Senate Subcommittee. Likewise, had time permitted they would have each presented an individual statement to this Subcommittee setting forth their particular concerns. The expedited scheduling of this hearing has prevented their doing so and they have elected to present a joint statement expressing their views.

IV. BACKGROUND OF THE SENATE AMENDMENT

In 1991 the Ninth Circuit Court of Appeals, in Federal Express Corp. v. California Public Utilities Commission, 936 F.2d 1075, held that Federal Express Corp. (FedEx) was not required to comply with certain state laws and regulations governing motor carriers since it was an air carrier regulated by the Federal Aviation Act. The effect of that decision was to permit FedEx to transport documents and small parcels between points in the eight states within the jurisdiction of the Ninth Circuit without the necessity of observing state laws and regulations applicable to regulated intrastate motor carriers.

United Parcel Service (UPS), the nation's largest motor carrier which specializes in the transportation of small parcels, has since waged an aggressive campaign to free itself of state regulation, purportedly for the purpose of "leveling the playing field" between it and FedEx. This effort, supported by the nation's largest general freight motor carriers, has culminated in the Senate Amendment. This Amendment has the effect of deregulating all rates, routes and services of surface transportation companies. As stated above, it was passed by the Senate without prior notice to the public, without opportunity for public hearings and without careful consideration of the many adverse economic and social consequences it will have in both the short and long term. Those effects are discussed in the following section.

V. THE SENATE AMENDMENT AND ITS IMPROVIDENT PROVISIONS

Earlier this year the U.S. House of Representatives passed the Federal Aviation Administration Authorization Act of 1994 (H.R. 2739) which is essentially an authorization bill to fund airport maintenance and construction. As an aviation bill, it properly does not contain any provision which would preempt state regulation of wholly intrastate non-air related motor carrier transportation.

On June 16, 1994 the U.S. Senate passed The Airport and Airway Improvement Act (S.1491) to which was appended the Section 211 Amendment. The Senate Amendment preempts entirely

state regulation of rates, routes and services of any "Intermodal all-cargo air carrier" which transports property, pieces, parcels or packages (except household goods) wholly within a single state by aircraft or by motor vehicle, regardless of whether or not the property has had or will have a prior or subsequent movement by air. This goes far beyond leveling the playing field between FedEx and UPS with respect to the motor carriage of documents and small parcels.

The preemption paragraph of Section 211 does not limit the exemption to documents and small parcels which is the type of traffic FedEx and UPS specialize in handling. Nor is it limited in any way to motor carrier transportation that is related to air transportation. In its present form, the exemption has been interpreted to apply to areas of motor carrier transportation which do not have the slightest connection with intermodal air transportation such as the transportation of bulk commodities in dump or tank trucks, and truckload shipments of steel and machinery on flatbed trucks, and similar specialized transportation services.

Under the definition paragraph of Section 211, a new entity to be known as an "Intermodal all-cargo air carrier" is created. That term is defined to include an "indirect cargo air carrier" as defined in Section 296.3 of Title 14, Code of Federal Regulations. It would include an air freight forwarder which is not regulated, which does not participate directly in the movement of property by either air carrier or motor carrier, and which can be established by anyone with relative

ease. As a result, a single-state motor carrier could become qualified as an air freight forwarder/indirect cargo air carrier and immediately invoke the preemption provisions in order to escape state regulation of rates, routes and service throughout the United States.

The Senate Amendment, which would deregulate all state regulation of intrastate motor carrier service with the exception of household goods, has no rational connection to the airport funding legislation to which it is attached. Moreover, it goes far beyond addressing the limited problem that allegedly confronts FedEx and UPS.

VI. ARGUMENT IN SUPPORT OF POSITION

1. Passage of the Senate Amendment Will Create Giant Monopolies at the Expense of Small to Medium-Sized Trucking Companies Without Any Discernible Benefits.

Assuming for purposes of this presentation that the playing field for FedEx and UPS can only be made level by means of federal preemption of state regulation, there is no justifiable purpose to be served by destroying the remainder of the intrastate motor carrier industry in the process.

If the states are no longer able to regulate any aspect of intrastate motor carrier transportation service other than that pertaining to the movement of household goods, then the states will have no ability whatsoever to influence the availability or quality of such service in order to ensure the satisfaction

of local and regional requirements of shippers and receivers. And in the absence of any regulation of intrastate rate structures, the largest motor carriers will be able to invade a state, target the most profitable and desirable intrastate traffic, selectively cut rates to levels below their fully distributed costs and thereby drive out the existing smaller competitors.

This is not mere theoretical speculation. It has already occurred during the last 14 years as a result of the partial deregulation of the interstate motor carrier industry. Hundreds, if not thousands, of small to medium-sized trucking companies, and many not so small companies, were driven out of business and into bankruptcy. These bankruptcies continue today. As a result there is a concentration of market share and power in the hands of a relative handful of motor carriers, which, not coincidentally, happen to be the same carriers that are supporting this federal preemption effort.

As occurred following partial deregulation on the federal level, after the initial shake-out the survivors of the first rate wars will engage in cut-throat competition in a concerted effort to hold or gain market share. The less profitable and less attractive traffic, which the major trucking companies will initially spurn, will not be adequate to support the continued viability of the small to medium-sized trucking companies. Small feeder lines, which frequently handle interstate shipments for large interstate carriers to and from

small towns, will disappear. Small shippers and receivers will then have no effective means of ensuring the continued availability of essential local trucking service at reasonable prices. They will be held captive by the major surviving trucking companies which will be able to charge premium rates for any service they deign to provide. On the other hand, price and service discrimination in favor of large shippers will increase at the expense of the smaller shippers that will already be at a disadvantage. Ultimately, the viability of the small shippers and receivers will be in jeopardy due to their inability to compete on the unlevel playing field that will be slanted in favor of their larger competitors.

It is difficult to understand why the two giants in the motor carrier industry that specialize in the transportation of documents and small parcels, as well as the other large general freight carriers, cannot abide by the rules that apply to all other intrastate motor carriers of property by applying for and obtaining operating authority from a state regulatory agency where required and then complying with the applicable state regulations. If thousands of carriers nationwide can follow these rules, including the small to medium-sized Pennsylvania carriers shown above, there is no reason why FedEx and UPS cannot do the same. Nor is there any reason why the giant carriers in the general freight category, some of which already hold intrastate operating authority in some states, cannot do likewise.

2. Preemption of State Regulation Will Seriously Impair Effective Enforcement of Safety Related Laws and Regulations.

As a result of such unrestrained rate competition the financial health of the smaller motor carriers will be seriously and adversely affected, threatening their very existence. Their marginal financial stability will first be reflected in their decreased attention to maintenance and replacement of vehicles, pressure to work drivers and equipment longer hours and ignoring a host of other safety related matters. With unsafe, and perhaps underinsured, motor vehicles on the highways, and with no effective state government oversight, shippers, receivers and the traveling public generally will be placed at risk.

There is another important factor that must be considered in connection with safety related issues. If the states are preempted from regulating the rates, routes and service of intrastate motor carriers, their investigative and enforcement staffs will be substantially reduced. As a direct consequence there will be no effective regulation or supervision of motor carrier compliance with safety regulations. The United States Department of Transportation is already unable to monitor the safety compliance of interstate motor carriers under its jurisdiction and has had to recruit state assistance. Those joint federal/state enforcement programs will be seriously jeopardized if there is a decrease in the state enforcement

staffs. That would appear to be an unavoidable consequence of enactment of the Senate Amendment.

Although the Senate Amendment states that it does not restrict the safety regulatory authority of the states, the practical effect will be just the opposite. This is a matter of vital importance to the general public and deserves thorough and deliberate consideration by Congress. Unsafe highways are far too high a price for the nation to pay for "private legislation" which goes far beyond resolving a back yard dispute over a limited issue between FedEx and UPS.

3. The Senate Amendment Will Cause Social Disruptions Which Have Not Been Given Adequate Consideration.

This Statement has thus far concentrated primarily on the impact the Senate Amendment will have on the small to medium-size intrastate motor carriers. There is another aspect of this which deserves equal attention. It is the effect it will have on the nation at large beyond the confines of the trucking industry.

Experience has shown that following the deregulation of the airline industry many theretofore well-established air carriers went out of business, resulting in substantial unemployment with all of the personal hardships that entails for the displaced workers and their families. The same thing happened following the 1980 partial deregulation of the interstate motor carrier industry. There is no reason to believe that the same results will not occur if the intrastate motor carrier industry is deregulated.

If the scenario previously described in Section 1 of this Argument were to take place, and we fully expect that it will, the employees of the small and medium-sized trucking companies that are forced out of business will be displaced. Those employees' means of livelihood will be ended and with it their privately funded health insurance, pension plans and life insurance benefits. If they are unable to find other employment the states will inevitably experience an increase in unemployment compensation claims.

The disappearance of many trucking companies, some of which are the primary economic anchor of small communities, will have a further negative impact on other non-trucking businesses in the community. It is well known that whenever a significant employer goes out of business there is a ripple effect throughout the local community and beyond. The company itself no longer purchases the equipment, materials and supplies that were necessary to conduct its business. That means the loss of sales and income to its suppliers. By the same token, the displaced employees of the terminated business have reduced purchasing power which is reflected in the decreased sales of the countless producers of merchandise and suppliers of services that previously enjoyed them as customers. The loss of enough revenue by these non-motor carrier businesses can in turn affect their continued level of employment, if not their own existence.

All of the above factors can result in an erosion of the tax base of the states and local communities. At that point

some decision must be made to either increase taxes and/or decrease public services, neither of which is desirable.

Attention should also be given to the fact that the states in various parts of the country have unique geographic and economic circumstances which require a carefully tailored transportation system. Over the years the states have developed transportation policies geared to those unique conditions. This Senate Amendment has the effect of telling the legislators in 42 states that their transportation policies developed over the last 60 years must give way to the parochial interests of FedEx and UPS.

At this point no adequate consideration has been given to the numerous economic and social implications of this legislation. It is imperative that such a far-reaching and potentially disastrous piece of legislation be studied thoroughly before becoming the law of this land.

4. The Senate Amendment Preempts State Regulation of Intrastate Traffic That is Not Even Remotely Connected With Air Transportation.

Certain types of commodities are not susceptible to transportation by air. Yet the Senate Amendment, by preempting the transportation of "property", would eliminate state regulation of the transportation of liquid and dry bulk commodities such as gasoline, diesel fuel, kerosene, chemicals, acids, coal, stone, gravel, cement, fertilizer and a host of similar commodities. Those commodities typically are transported in tank trucks and dump vehicles.

In addition, there are a myriad of other commodities which are not susceptible to movement by air. These include various iron and steel products, heavy machinery, large appliances, construction materials, new furniture, etc. Many of these products are transported on specialized motor vehicle equipment such as flatbed trailers. Neither air carriers, indirect cargo air carriers, FedEx nor UPS engage in the transportation of these types of products.

Extending federal preemption of state regulation to these types of non-air related commodities is completely unwarranted in view of the limited nature of the alleged problem involving FedEx and UPS.

VII. CONCLUSION

There is no factual basis developed in any record before this Subcommittee or the U.S. Senate which would support the elimination of all state regulation over rates, routes and services. Consequently, there is no valid justification for the broad federal preemption of such state regulation as is envisioned by the Senate Amendment.

The serious economic and social consequences that will result if the Senate Amendment becomes law should not be dismissed lightly. This all began as a limited matter involving FedEx and UPS. It has now virtually spun out of control overnight into total state deregulation of rates, routes and service. The opposing motor carriers herein submit

that further consideration of the Senate Amendment should be withheld until such time as all interested parties have had ample opportunity to consider this legislation, gather all pertinent information from as many sources as possible and evaluate its many and varied consequences. If that complete investigation discloses a problem between FedEx and UPS which cannot be resolved other than by some type of federal legislation, then legislation can be tailored to meet the problem involving those two carriers without totally disrupting the entire industry. If that study discloses that some further reform is in order with respect to federal and/or state transportation regulation, then appropriate legislation can be formulated to address the specific problems disclosed. To do otherwise at this time by proceeding with the Senate Amendment, in view of the many unanswered questions and lack of consideration to the consequences, would not be in the public interest.

Respectfully submitted,

By: William J. Lavelle

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TESTIMONY OF
ALEX LEWANDOWSKI, PRESIDENT
TRANSPORTATION LAWYERS ASSOCIATION

RE: Preemption of State Regulation of Surface Transportation Under Senate Amendments (S.1491) To the Federal Aviation Administration Authorization Act of 1994 (H.R. 2739)

EXECUTIVE SUMMARY

The Transportation Lawyers Association (TLA) is a specialized bar organization whose 700 members represent providers and users of surface, air and ocean transportation services in matters arising before all Federal and State courts and administrative agencies. TLA believes that the current version of section 211 of S. 1491 goes far beyond what is necessary to correct the limited problem identified by its proponents, i.e., that certain express carriers of envelopes and small packages, primarily or substantially by air, have found it difficult to comply with State regulatory requirements that were designed principally to regulate intrastate pricing and market entry by trucking companies providing conventional all-highway services.

Apparently perceiving difficulty in drawing a line between over-the-road freight haulers and the integrated package express carriers, the drafters of section 211 would impose sweeping Federal preemption on both sectors. As TLA will demonstrate, however, appropriate lines can be drawn. That being the case, it is at best premature for the Federal Government to mandate deregulation of

intrastate trucking in the 41 States which have seen fit to preserve such regulation, often after intense debate.

TLA submits that State prerogatives to regulate intrastate commerce should not, in our Federal system, be swept aside without compelling justification. No such justification exists here. Indeed, after fourteen years of experience with deregulation of trucking in interstate markets, the results in terms of safety, stability and service are mixed at best. Interstate deregulation of over-the-road freight is not such a clear and shining success as to justify mandating the same approach for intrastate trucking under the widely divergent market conditions of Massachusetts and Montana, Nevada and North Carolina, and the 37 other States that have opted for varying degrees of continuing regulation.

TESTIMONY OF
ALEX LEWANDOWSKI, PRESIDENT
TRANSPORTATION LAWYERS ASSOCIATION

RE: **Preemption of State Regulation of Surface Transportation Under Senate Amendments (S.1491) To the Federal Aviation Administration Authorization Act of 1994 (H.R. 2739)**

I am pleased to have this opportunity to present the views of the Transportation Lawyers Association (TLA) in connection with the Committee's hearings to consider Federal preemption of State regulation of motor carriers.

I. IDENTITY.

TLA's membership is composed of approximately 700 attorneys in the United States, Canada, Mexico and the United Kingdom who practice transportation law. Members of the Association represent a wide variety of interests, including surface, air and water carriers for hire, private carriers and shippers. Our U.S. members are actively involved in practice before the Interstate Commerce Commission, the Department of Transportation, the Federal Maritime Commission, all of the State regulatory agencies, and of course the State and Federal courts.

II. BACKGROUND/BASIC POSITION.

As adopted by the Senate on June 16, 1994, section 211 of S. 1491, an aviation funding bill, imposes sweeping deregulation of intrastate all-highway freight operations. This measure apparently was prompted by the complaints of certain intermodal express carriers about intrastate market entry and pricing regulations in certain States. As passed, however, section 211 makes no distinction between express carriers of envelopes and small packages in integrated air/ground service, on the one hand, and conventional highway freight haulers on the other hand. Although everyone in this room knows the difference between these two widely divergent sectors of the transportation industry, apparently the drafters of section 211 found it difficult to devise legislative

language that would reflect the difference, or would limit preemption effects to the entry and rate regulations complained of by the express carriers.

TLA believes appropriate lines can be drawn; we will suggest how. Moreover, if the lines can be drawn, responsible legislation should draw them. If it is true that the framers of State entry and rate regulations for intrastate freight hauling failed to foresee the development of a package express industry ill-suited to regulation in that manner, it does not follow that section 211 should be equally blind to the differences between freight hauling and package express services. Nor does it follow that any difficulties experienced by package express services with intrastate entry and rate regulation should be "cured" by sweeping preemption of State regulation having anything to do with "rates, routes and services."

To the contrary, there is good reason for caution about extending section 211 beyond the express carriers and the specific entry and rate issues they have identified. Before mandating broad deregulation of intrastate trucking markets, Congress should consider carefully the results of interstate trucking deregulation over the past 14 years. Whether examined in terms of safety, stability or service to the public, interstate deregulation of over-the-road freight hauling is not such a clear and shining success as to justify mandating the same approach at the State level. It is noteworthy that 41 States with widely divergent market conditions have opted to continue regulating intrastate trucking, often after intense debate. A backdoor amendment to an aviation bill is not an appropriate vehicle for substitution of Washington's judgment on this issue.

III. THE AMENDMENT AND ITS CRITICAL PROVISIONS ARE EXCESSIVELY BROAD.

Section 211 would amend existing premptive language in section 105(a) of the Federal Aviation Act (49 U.S.C. § 1305(a)) to preclude all State regulation of rates, routes and services of "any intermodal all-cargo air carrier" which transports property, pieces, parcels or packages (except household goods) wholly within a single State by aircraft or by motor vehicle, regardless of whether or not the property has had or will have a prior or subsequent movement by air.

The definition of an "intermodal all-cargo air carrier" in section 211 includes not only direct air carriers (e.g. Federal Express) and affiliates or major users of direct air carriers (such as United Parcel Service); it also includes any "indirect cargo air carrier," i.e., an air freight forwarder. Under 14 CFR Part 296 (copy attached as Appendix A), it is apparent that almost anyone can call himself or herself an air freight forwarder, without compliance with safety, fitness or registration requirements of any kind. Once this is done, the motor carrier of which the "forwarder" is a part, or with which it is affiliated, is exempt from all State laws relating to rates, routes and service. A motor carrier could also qualify under the preemption provision if it utilizes, as principal or as a shipper's agent, an air carrier at least 15,000 times annually, but this "frequent use" criterion is moot for any air freight forwarder or its affiliates. These provisions permit virtually any carrier to qualify as an "intermodal all-cargo air carrier," regardless of whether the size or type of freight it handles would ever move by air.

Not only does section 211 cover much more than intermodal express services; it also preempts much more than entry and rate regulation by the States. The language of Section 211, which bars application of State law to the "rates, routes or services" of a

given group of carriers, is extremely broad. Congress should bear in mind the broad interpretation that the existing language of 49 App. U.S.C. § 1305 already has received in the courts.

In *Morales v. Trans World Airlines*, ___ U.S. ___, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992), the Supreme Court held that attempts by several States to enforce State laws prohibiting deceptive advertising were preempted by Section 1305. *Morales* drew upon the broad construction of the phrase "relating to" that it had developed in cases interpreting ERISA. The phrase means "to stand in some relation; to have bearing or concern; to pertain, refer; to bring into association with or connection with." *Morales* consequently rejected the argument that Section 1305 preempts only State laws specifically addressed to the airline industry. Laws of general application, even those consistent with Federal law, are preempted if they have an effect upon the carrier's rates, routes or services. Some State laws may still apply, but only if the relationship to airline services is "too tenuous, remote or peripheral."

As a consequence, Section 1305 has carved out an area in which airlines are exempt from a wide variety of State law of general application, including State common law. For example, an airline obtained dismissal of a tort claim against it where a stewardess stomped upon the passenger's foot and injured him. *Baugh v. Trans World Airlines, Inc.*, 915 F.2d 693 (1990). Another tort claim arising out of an airline's action in permitting several cases of rum to be stored in an overhead compartment, so as to result in serious personal injury when they fell on a passenger, was dismissed under this section. *Hodges v. Delta Airlines, Inc.*, 4 F.3d. 350 (5th Cir. 1993). To be sure, the Federal courts are split on this application of Section 1305 to personal injury suits by passengers. Compare *Margolis v. United Airlines, Inc.*, 811 F.Supp. 318 (E.D. Mich. 1993). However, the very existence of the

split of judicial authority illustrates the ambiguity and breadth of this statutory language.

Section 1305 also has been held to preempt claims against airlines based upon tortious interference with business relations and unfair competition. *Continental Airlines v. American Airlines*, 824 F.Supp. 689 (S.D. Tex. 1993). It also has barred State claims brought by a passenger for false imprisonment. *Williams v. Express Airlines I, Inc.*, 825 F.Supp. 831 (W.D. Tenn. 1993).

One area of particular concern should be claims relating to loss or damage of freight. Federal law, specifically the Carmack Amendment, applies only to shipments moving in interstate commerce. Shipments moving in intrastate commerce presently are governed by State law pertaining to shipments via common carriers. There can be no doubt that the rules governing the carrier's liability for loss or damage of the cargo entrusted to its care "relate to" its service. Indeed, the connection is so clear that the Federal rule is embodied in the Interstate Commerce Act and the ICC has prescribed rules for processing loss and damage claims. Section 211, however, would bar application of State law, leaving no law to apply if a carrier loses or damages an intrastate shipment!

Finally, Congress should be concerned about the language which states that no State may enforce any law, regulation or standard pertaining to the forbidden subjects. That language may well be construed to mean that the Federal courts are the exclusive jurisdiction for actions arising out of disputes with carriers falling within the exempt class. Since there are probably at least 60,000 motor carriers with authority to transport shipments in intrastate commerce, the impact upon the already overburdened Federal court system can only be imagined.

In sum, section 211 is overbroad in terms of both the carriers it covers and the laws it preempts. Its language would preclude State economic regulation, not only of UPS, but of bulk haulers using tankers or dump trucks, flatbed haulers of steel and heavy machinery, and a host of other trucking operations having not the slightest connection with intermodal express services. Moreover, section 211 would preempt not only the entry restrictions and tariff filing requirements which Federal Express finds odious, but also essential protections for shippers seeking recompense for lost or damaged cargo.

IV. THE OVERBREADTH CAN BE CORRECTED.

The current language of section 211 apparently results from difficulties experienced by both courts and the Congress in defining the intermodal express services provided by Federal Express, UPS and the like. The definitional problem surfaced in *Federal Express Corp. v. California Public Utilities Commission*, 936 F.2d 1035 (9th Cir. 1991), in which the Court of Appeals held that section 105(a) of the Federal Aviation Act of 1958 precluded State regulation of intrastate trucking operations conducted directly by a certificated air cargo carrier such as Federal Express. As written, however, the decision did not cover UPS and certain other intermodal express carriers who conducted their integrated air and surface operations through multiple corporate entities. In an effort to include these carriers, section 211 was drafted in terms of affiliation with, and/or frequent use of direct or indirect carriers. As will be seen, however, this language goes far beyond anything necessary to address the underinclusiveness of the *Federal Express* decision.

The perceived competitive imbalance between Federal Express and UPS with respect to the intrastate motor carrier transportation of documents and small parcels can be easily resolved without totally disrupting the entire intrastate motor carrier industry.

Only four changes are needed in section 211 to accomplish this result:

First, revise the definition of the type of traffic that would be preempted from State regulation to read "transporting shipments of property each weighing 150 pounds or less" in proposed new paragraph (4)(A) of Section 105(a) of the Federal Aviation Act of 1958 (49 App. U.S.C. § 1305(a)). As discussed later in this statement, a similar approach was utilized by California legislators in addressing the problems created by the *Federal Express* decision.

Second, revise the same paragraph to preempt only State regulation of "market entry and rate filing by" covered carriers. We note that this approach is similar to that being suggested in S. 2275 for the selective paring down of the Interstate Commerce Commission's regulatory responsibilities over interstate trucking.

Third, revise the definition of an "intermodal all-cargo air carrier" in proposed new paragraph (25) to Section 101 of the Federal Aviation Act of 1958 (49 App. U.S.C. § 1301), so that "indirect" air cargo carriers would be excluded.

Fourth, rely on frequent use of direct air carriers, regardless of affiliations, as the benchmark for including surface operations in the definition of "intermodal all-cargo air carrier."

Appendix B to this statement provides a "black line" version of section 211, showing the relatively minor deletions and insertions necessary to accomplish these refinements.

V. WHY CORRECTION IS NEEDED.

As shown in Appendix B, it is possible for Congress to steer between the underinclusiveness of *Federal Express* and the excessive breadth of section 211 as now written. The remainder of this statement will address issues of safety, stability, service and States' rights to show that steering a middle course is not only possible, but prudent at this time. While it is not the province of a bar association such as TLA to offer final judgments on the merits or demerits of economic regulation of intrastate trucking, we do suggest that total preemption of such regulation should not be imposed on the States as an afterthought in an aviation bill. Under our Federal system, such sweeping intrusion into State prerogatives requires a compelling case, which its proponents simply have not made.

A. Safety.

As noted in an annual survey of State law prepared by TLA, motor common carrier transportation of freight was deregulated in some States during the 1980's, and in other States such transportation was never regulated.[1] We have seen no evidence of any correlation between deregulation and any State's economic recovery or economic performance in recent years. Neither is there any evidence that State trucking regulation exercises an influence upon the national economy which is so overwhelming as to justify total Federal preemption of the policies of those States which continue to exercise some degree of regulation.

In contrast to the absence of economic justification for Federal preemption, there is an accumulating body of evidence which suggests that deregulation of motor carriage has adverse side effects which must be weighed carefully. The issues at stake here are not purely economic. Important social issues, including safety, are inevitably intertwined with economic conditions in

[1] Unregulated States are Alaska, Arizona, Delaware, Florida, Maine, Maryland, New Jersey, Vermont and Wisconsin.

transportation, and such effects must be considered. Unrestrained competition in interstate trucking during the 1980's created severe pressure on the LTL common carrier segment of the trucking industry, leading to thousands of bankruptcies. This economic pressure also had its consequences for the drivers, whose wages as a whole remained at 1980 levels or lower, while their cost of living continued to rise. See D. Waring, "The Downside of Motor Carrier Deregulation," 21 Transp. L. Journal 409 (1993) (excerpted in Appendix C). These pressures created a built in incentive to drive longer or faster, or both, despite the fact that numerous studies have established driver fatigue as a major risk factor in trucking accidents.

A study released in January, 1992, by the Insurance Institute for Highway Safety was based upon interviews with 1,249 drivers at locations across the country. The study concluded that 73% of the drivers regularly violate the Federal Highway Administration hours of service regulations. Two-thirds of the drivers stated that they had driven more than was recorded in their log books during the past year. Nineteen percent admitted having fallen asleep at the wheel one or more times during the preceding month.

One of the conclusions reached by that study was as follows:

> The survey results suggested that economic factors are a major impetus for violating hours-of-service rules. Among these economic factors are tight delivery schedules and being paid $0.30 or less per mile. This study was not able to evaluate whether being an hours-of-service violator is associated with piecework payments systems (e.g., per mile payment) because more than 90 percent of the drivers were paid in this manner. Many other job, vehicle and driver characteristics were associated with violation of the rules. Some of these risk-factors were associated with each other, for example, young age and low pay rates.

Other reputable studies have reached similar conclusions. In California the Heavy Commercial Vehicle and Driver Safety Task

Force under the direction of the California Highway Patrol made its report to the Governor and the Legislature in January, 1991.[2] One of the conclusions reached by that group was stated as follows:

> With the competitive environment that currently exists in the motor carrier industry, some operators have cut corners on operating costs in order to survive. Too often, this involves running trucks and drivers longer hours in order to meet commitments and to stay competitive. Unfortunately, the environmental forecast for the motor carrier industry in the 1990's is for more of the same. The economic incentive for a carrier to operate illegally or unprofessionally is probably going to increase.

In 1990 the National Transportation Safety Board frankly observed:

> In the last decade, special attention has been focused on issues of fatigue and hours of service compliance in the trucking industry. This attention is partly the result of the Motor Carrier Act of 1980, which deregulated many aspects of the industry. The effect of this Act on the industry has been profound. It has allowed small carriers free entry into commercial areas previously reserved for large companies, and it has resulted in generally increased competition and cost cutting pressures on all commercial carriers. This increased competition provides economic incentives for drivers to extend their working hours to a degree that causes serious fatigue problems.[3]

In 1989 the House Public Works and Transportation Committee asked the General Accounting Office to review whether economic factors could be used as predictors of accident rates in the trucking industry. The subsequently published GAO study reached a number of disturbing conclusions. Generally, the data indicated that carriers with poorer financial positions pose greater safety risks. Those groups of carriers with the least favorable financial

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[2] Status Report on Truck and Truck Driver Safety, Jan., 1991.

[3] Fatigue, Alcohol, Other Drugs, and Medical Factors in Fatal- to the Driver Heavy Truck Crashes, p. 76, NTSB report PB90-917002, Feb. 5, 1990.

positions had the highest group accident rates. The data also showed that carriers using what GAO termed the "broker" method of operation, relying heavily upon leased equipment and drivers as a device to transfer financial risk, had accident rates 15 to 21 percent above the norm.[4]

Of course, other studies by deregulation proponents claim that there is no link between deregulation and reduced safety. In view of the substantial evidence suggesting such a link, however, we do not believe that current regulatory and economic conditions in the interstate transportation of property compel the conclusion that the States, with their diversity of economic conditions and policies, should be required to deregulate by Federal fiat.

B. Service and Stability.

Given the track record of interstate deregulation, which is mixed at best as shown above, we submit that a given State rationally might opt to retain regulatory tools for improving stability and service in intrastate trucking markets. As is well known, many such markets are relatively unattractive to carriers because they involve small communities, short hauls and limited volumes of available traffic. While certain studies by deregulation proponents have suggested that interstate deregulation had no adverse impact on small-community service, the same carriers often serve such communities in both interstate and intrastate commerce. We know of no studies that have even considered the possible role of intrastate regulation in cushioning the impact of interstate deregulation on small-community service.

In addition, a new role for State regulation may be emerging under the North American Free Trade Agreement ("NAFTA"). In December of 1995, Mexican carriers will be permitted to operate

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[4] Freight Trucking, Promising Approach for Predicting Carriers' Safety Risks, GAO/PEMD-91-13, April 1991.

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throughout California, Arizona, New Mexico and Texas in the transportation of cross-border traffic. Four years later they will be permitted to operate throughout the United States. At the present time, there are more than 4,000 Mexican trucking firms registered to operate in the commercial zones along the border. During the debates over NAFTA, it was recognized that Mexican trucking firms have a huge labor cost advantage over U.S. carriers.

Under NAFTA, Mexican truckers are to haul only cross-border traffic in the U.S. However, who is to prevent Mexican truckers from employing their labor cost advantage to engage in illegal cabotage? The Interstate Commerce Commission, with its meager enforcement resources, cannot even begin to do so. Federal authorities must rely upon cooperative agreements with State authorities in order to carry out any meaningful enforcement in the motor carrier field. We suggest that dismantling State regulation by Federal fiat at this time would be the equivalent of unilateral disarmament in facing competition from Mexican carriers.

C. Federalism.

Section 211 represents a serious departure from accepted notions of federalism. For example, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), a recent major landmark in legislation relating to surface transportation, recognizes that States and municipal planning groups are most qualified to determine the transportation policies and priorities which will best serve their respective areas. It delegates authority to States and metropolitan planning organizations to develop and implement long range transportation planning.

The proposed preemption of State laws relating to transportation breaks with this tradition and, without rationale, invades areas of governance traditionally and wisely left to the States. On October 26, 1987, former President Reagan eloquently expressed a sound Federal philosophy of governance in Executive

Order 12612 as follows (1987 U.S. Code Cong. & Admin. News at B-82):

> In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly. In Thomas Jefferson's words, 'the States are the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies.'
>
> The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues.

As shown by TLA's annual surveys of State law (which we will be happy to furnish on request), the States have adopted a variety of different legal frameworks for the transportation of goods by motor carrier within their respective boundaries. These approaches range from relatively traditional regulation to complete deregulation, but a clear majority of States regulate surface transportation to some degree.

It is particularly significant that this Amendment would overturn California's more balanced response to the previously mentioned *Federal Express* decision. California, following the 9th Circuit's decision, specifically reestablished a uniform and consistent approach for the regulation of safe operations by all for-hire motor carriers in California, including small package carriers such as UPS and Federal Express. All such carriers must register with the California PUC. They must participate in the State's "Pull Notice Program" which monitors driving records of all commercial drivers, and also in the Biennial Inspection of Terminals Program (BIT). Each unit must bear a California Highway Patrol vehicle identification number. Such carriers also must file evidence of public liability, property damage and workers'

compensation insurance coverage. These legitimate State concerns will be annihilated by the Amendment.

The California legislation contains yet other limitations that would be swept aside by the Amendment. California prohibits intermodal integrated small package carriers from using subhaulers or underlying contract carriers for more than 10% of their traffic. It defines an integrated intermodal small package carrier as a person or corporation transporting by motor vehicle packages or articles weighing no more than 150 pounds. Furthermore, the use of aircraft cannot be merely incidental or occasional. (See Appendix D for California's definitive language, which provides further evidence that the problem of "line drawing" in section 211 is not insurmountable.) In view of the action by California, can it be doubted that the States are fully capable of resolving these issues for themselves and that it is totally unnecessary for Congress to impose a Federal solution?

Preemption of State law is a radical cure, which should not be adopted absent strong evidence that there is a "disease" that requires it, and that the "cure" will not be worse than the disease. There is no evidence that conditions exist which would justify this intrusion into the affairs of the States. Section 211 after all would preempt State laws which apply only to the transportation of a shipment from one point to another, entirely within the same State, without passing through another State. These laws do not apply to the transportation of shipments which move from or to another State. Under the expansive interpretation of the term "interstate commerce" adopted by the Interstate Commerce Commission in the past decade, these State laws likewise do not apply to shipments which a shipper has moved into a State with the intention of further distributing from a warehouse or terminal. Furthermore, by virtue of an exemption contained in the Motor Carrier Act of 1980, State regulatory laws do not apply to any shipment having a prior or subsequent movement by air. See 49

U.S.C. § 10526(a)(8)(B). Consequently it is clear that section 211 would preempt State laws that today have application only to shipments that are clearly and unambiguously intrastate in nature.

Those State laws have been adopted by legislators well acquainted with local conditions in States as divergent as Massachusetts and Montana, Nevada and North Carolina. Given the results of interstate deregulation -- including widespread bankruptcies and the undercharge crisis which Congress recently had to address through the Negotiated Rates Act of 1993 -- surely the States can be forgiven for suggesting that Washington, D.C. is not the fount of all wisdom in these matters.

V. CONCLUSION.

The Transportation Lawyers Association continues to support procedural reforms that are truly designed to promote more efficient regulation. For example, TLA supported the elimination of bingo stamps and the provisions concerning State participation in the International Fuel Tax Agreement which were incorporated into ISTEA. Those provisions, however, did not interfere with the policy choices made by the various States in determining their own fuel tax rates and vehicle registration fee structures.

In contrast, the Amendment represents an unwarranted intrusion upon State policies, contrary to the guiding principles of federalism. TLA opposes this measure because there is no demonstrated need for such meddling in purely intrastate transportation and because there is strong evidence to suggest that unwarranted Federal intrusion would have serious unintended consequences.

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tained in the registrant's applicable Canadian licenses.

§ 294.88 Northwest Ontario restriction.

(a) Except as set forth in § 294.60 or paragraph (b) of this section, registrants shall not engage in the carriage of persons in foreign air transportation between the United States and Canada to or from a point in Ontario, west of a line drawn due north from Blind River, Ontario (46° 11' North Latitude, 82° 58' West Longitude) and extending to the border between Ontario and Manitoba, unless:

(1) The point is a resort, camp, or outpost operated by a person duly licensed for such purpose by the Government of the Province of Ontario, or the licensed base of a Canadian charter air carrier, or a Canadian Customs port of entry;

(2) The registrant is required on each flight out of the restricted area to make a stop at a Canadian Customs port of entry or at the licensed base of a Canadian charter air carrier where officers of the Ontario Ministry of Natural Resources may be available to make such inspection as they consider desirable; and

(3) The registrant has available on its aircraft for inspection by the U.S. authorities satisfactory evidence that it has complied with these conditions.

(b) The prohibition set forth in paragraph (a) of this section does not apply to flights performed for medical evacuation or similar emergencies.

(c) A registrant shall clearly notify in writing all persons who contract for the registrant's service, and are affected by the restrictions of this section, of the limitations set forth in paragraph (a) of this section.

§ 294.89 Uplift ratio.

Except as set forth in § 294.60, the aggregate number of all United States-originating charter flights performed by a registrant on or after May 8, 1974, shall not, at the end of any calendar quarter, exceed by more than one-third the aggregate number of all Canadian-originating charter flights performed by the registrant on or after May 8, 1974. For the purpose of making such computation, the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter is one-way, round trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (1) "small aircraft" flights of persons; and (2) "small aircraft" flights of property.

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the registrant is the lessee, and shall not be included if the registrant is the lessor.

(d) There shall be excluded from the computation:

(1) Flights with aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(2) Flights originating at a United States terminal point on a route listed in the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder. These flights may be excluded from the computation only if, pursuant to any such agreement, the registrant also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over that route, and provides some scheduled service on any route pursuant to any such agreement, and such flights serve either (i) a Canadian terminal point on such route, or (ii) any Canadian intermediate point authorized for service on the route by the foreign air carrier permit.

PART 296—INDIRECT AIR TRANSPORTATION OF PROPERTY

Subpart A—General

Sec.

296.1 Purpose.

AUTHORITY: 49 U.S.C. 1301, 1302, 1324, 1378, 1379, 1386.

SOURCE: ER-1261, 46 FR 54727, Nov. 4, 1981, unless otherwise noted.

Subpart A—General

§ 296.1 Purpose.

This part establishes rules for the indirect air transportation of property. It creates a class of air carriers to provide this air transportation and grants exemptions from certain provisions of the Federal Aviation Act.

§ 296.2 Applicability.

This part applies to air transportation of property by indirect cargo air carriers, and to persons entering into control relationships with indirect cargo air carriers.

§ 296.3 Indirect cargo air carrier.

An indirect cargo air carrier is any U.S. citizen who undertakes to engage indirectly in air transportation of property, and uses for the whole or any part of such transportation the services of an air carrier or a foreign air carrier that directly engages in the operation of aircraft under a certificate, regulation, order, or permit issued by the Department of Transportation or the Civil Aeronautics Board, or the services of its agent, or of another indirect cargo air carrier.

[ER-1261, 46 FR 54727, Nov. 4, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

§ 296.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 296.5 Agency relationships.

An indirect cargo air carrier may act as agent of a shipper, or of a direct air carrier that has authorized such agency, rather than as an air carrier, if it expressly reserves the option to do so when the shipment is accepted.

§ 296.6 Public disclosure of cargo liability limits and insurance.

Every indirect cargo air carrier shall give notice in writing to the shipper, when any shipment is accepted, of the existence or absence of cargo liability accident insurance, and of the limits on the extent of its liability, if any. The notice shall be clear and conspicuously included on or attached to all of its rate sheets and airwaybills.

Subpart B—Exemption for Indirect Air Transportation of Property

§ 296.10 Exemption from the Act.

(a) Indirect cargo air carriers are exempted from the provisions of Title IV of the Act only if and so long as they comply with the provisions of this part and its conditions, and to the extent necessary to permit them to organize and arrange their air freight shipments to provide indirect air transportation, except for the following sections:

(1) Subsection 403(b)(2) (solicitation of rebates). However, indirect cargo air carriers are exempt from section 403(b)(2) to the extent necessary to permit them to solicit, accept, or receive fees from direct air carriers.

(2) Section 404(a) to the extent required to provide safe service, equipment, and facilities in connection with air transportation.

(3) Subsection 404(b) (nondiscrimination) with respect to foreign air transportation.

(4) Section 407(a) (accounts, records, and reports) and 407(e) (inspection of accounts and property);

(5) Section 411 (unfair or deceptive practices or methods of competition);

(6) Section 413 (form of control); and

(7) Section 415 (inquiry into air carrier management).

(b)—(c) [Reserved]

(d) Direct air carriers are exempted from section 403 of the Act to the extent necessary to permit them to pay, directly or indirectly, fees to indirect cargo air carriers.

[ER-1261, 46 FR 54727, Nov. 4, 1981, as amended by ER-1335, 48 FR 22705, May 20, 1983; ER-1381, 49 FR 25226, June 20, 1984, 50 FR 31142, July 31, 1985]

Subpart C—Violations

§ 296.20 Enforcement.

In case of any violation of any of the provisions of the Act, or of this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding under section 1002 and 1007 of the Act before the Department or a U.S. District Court, as the case may be, to compel compliance. The violator may also be subject to civil penalties under the provisions of section 901(a) of the Act, or other lawful sanctions.

[ER-1261, 46 FR 54727, Nov. 4, 1981, as amended by Docket No. 47939, 57 FR 40103, Sept. 2, 1992]

PART 297—FOREIGN AIR FREIGHT FORWARDERS AND FOREIGN COOPERATIVE SHIPPERS ASSOCIATIONS

Subpart A—General

Sec.

Subpart B—Exemption for Foreign Indirect Air Transportation of Property

Subpart C—Registration for Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

Subpart D—General Rules for Foreign Indirect Air Carriers

Subpart E—(Reserved)

Subpart F—Violations

AUTHORITY: 49 U.S.C. 1324, 1386.

SOURCE: ER-1159, 44 FR 69635, Dec. 4, 1979, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 297 appear at 57 FR 40103, Sept. 2, 1992.

Subpart A—General

§ 297.1 Purpose.

This part establishes registration procedures and operating rules for foreign air carriers that engage indirectly in interstate, overseas, or foreign air transportation of property. It relieves these carriers from certain provisions of the Act, and establishes simplified reports for them.

[ER-1294, 47 FR 19684, May 7, 1982]

§ 297.2 Applicability.

This part applies to interstate and overseas air transportation of property and to foreign air transportation of property outbound from the United States by foreign indirect air carriers. It also applies to applications for registration as a foreign indirect air carrier of property.

[ER-1294, 47 FR 19684, May 7, 1982]

§ 297.3 Definitions.

For purpose of this part:

(a) *Foreign air freight forwarder* means a foreign indirect air carrier that is responsible for the transportation of property from the point of receipt to point of destination, and utilizes for the whole or any part of such transportation the services of a direct air car-

SEC. 211. INTERMODAL ALL-CARGO AIR CARRIERS.

(a) DEFINITIONS.-Section 101 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301) is amended by redesignating paragraphs (25) through (41) as paragraphs (26) through (42), respectively; and by inserting immediately after paragraph (24) the following new paragraph:

"(25) 'Intermodal all-cargo air carrier means-

"(A) ~~an~~ a direct air carrier ~~including an indirect cargo air carrier, as defined in section 296.3 of title 14, Code of Federal Regulations, as in effect on March 1, 1994,~~ that undertakes to provide the transportation described in section 105(a)(4); or

"(B) any other carrier-

"(i) which has authority to provide transportation;

"(ii) which ~~(I) is affiliated with an air carrier described in subparagraph (A) through common controlling ownership, or (II)~~ utilizes, as principal or as shipper's agent, ~~or is affiliated through common controlling ownership with companies that utilize an~~ a direct air carrier described in subparagraph (A) at least 15,000 times annually; and

"(iii) which undertakes to provide the transportation described in section 105(a)(4)."

(b) PREEMPTION.-Section 105(a) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1305(a)), as amended by this Act, is further amended by adding at the end the following new paragraph:

"(4)(A) Except as provided in subparagraph (B), no State or political subdivision thereof, no interstate agency of two or more States, and no other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to ~~rates, routes, or services of~~ market entry and rate filing by any intermodal all-cargo air carrier when such carrier is transporting shipments of property~~, pieces, parcels, or packages~~ each weighing 150 pounds or less between States or wholly within any single State by aircraft or by motor vehicle (whether or not such property has had or will have a prior subsequent air movement).

"(B) Subparagraph (A)-

"(i) does not apply to the transportation of household goods as defined in section 10102(II) of title 49, United States Code:

"(ii) shall not restrict safety regulatory authority; and

"(iii) does not apply to the regulation of vehicle size and weight.

For purposes of clause (ii), the authority to regulate rates, routes, or services shall not be construed as safety regulatory authority, and the authority permitted under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) to regulate routing shall not be affected.

"(C) For purposes of this paragraph, a person who is an intermodal all-cargo air carrier in any one State shall be considered such a carrier in all States.

"(D) This paragraph shall not in any way limit the applicability of paragraph (1)".

APPENDIX C

TABLE I

Year	ROE (%)	ROI (%)	Op. Ratio (%)
1976	15.04	20.25	95.14
1977	17.19	24.55	94.45
1978	15.84	22.17	94.52
1979	11.34	13.76	96.52
1980	9.03	13.48	96.63
1981	6.80	10.93	97.31
1982	1.89	5.51	98.54
1983	11.44	17.08	95.67
1984	9.46	15.34	96.09
1985	7.43	13.73	96.35
1986	13.19	19.37	94.63
1987	5.49	10.47	97.04
1988	15.23	15.50	95.51
1989	8.26	11.92	96.32
1990	8.99	13.20	96.06
1991	7.55	11.81	96.76
1992	11.15	15.26	95.93

In 1964 the ICC declared that 93.0 was a reasonable operating ratio for the industry. Table I shows that for the years 1976 to 1979 the average operating ratio was 95.16 which rose to 96.37 for the next 10 years, a 25% deterioration in operating margin.

It is clear that regardless of which of the three measurements is used, the carriers were distinctly more profitable prior to the Motor Carrier Act of 1980, or, more to the point, before the ICC administratively loosened regulation drastically. In this regard, note that there was nothing about the pre-1980 period which could properly be called excessive profitibility. Therefore, the subsequent deterioration in profitibility was from a level which was already inadequate. Furthermore, the deterioration in profitability becomes more startling when it is realized that the carriers comprising the group in the late years are the survivors; the weakest carriers had been eliminated which should have improved the earnings indicators.

A sadder statistic to contemplate is the business failure rate. Table II shows the trend in trucking industry failures and the rate per ten thousand concerns as well as the comparison of that rate to that of All-Industry.

TABLE II

Year	Trucking Failures Number	Trucking Failures Rate	All-Industry Failure Rate	Ratio Trucking Rate to All Ind.
1978	162	24.2	24	1.01
1979	186	27.2	28	.97
1980	382	52.9	42	1.26
1981	610	81.2	61	1.33
1982	960	121.3	88	1.38
1983	1228	147.5	110	1.34
1984	1411	180.7	107	1.69
1985	1541	191.1	115	1.66
1986	1561	183.6	120	1.53
1987	1345	151.5	102	1.49
1988	1242	141.8	98	1.45
1989	1263	117.6	65	1.81
1990	1593	137.9	76	1.83
1991	2323	178.3	107	1.67
1992	2259P	173.4P	126P	1.38P

P = Preliminary

Note that in the closing days of pre-1980 regulation the failure rate of the trucking industry was virtually identical to that of all industry, but as deregulation took its toll, through the decade of the 80's, the failure rate of trucking relative to all industry grew dramatically and continues so. Preliminary data for 1992 suggests the distortion is abating but at best it has hardly given cause for complacency. This is the inevitable consequence of the financial deterioration of the industry seen in Table I.

It was stated in the quoted comments that financial distress would impact the condition of the equipment operated by the carriers. A good measure of that characteristic can be found in the data maintained by the Motor Vehicle Manufacturers Association pertaining to the age of trucks. This is shown in Table III.

TABLE III
AGE OF TRUCKS
(numbers of trucks in millions)

Year	Age All Trucks	Number 12 Years and Older	Number of Trucks All ages	Ratio 12 Year Olds to Total*
1970	7.3	3.9	17.7	100
1971	7.3	4.0	18.3	99
1972	7.2	4.0	19.7	92
1973	7.0	4.0	21.3	85
1974	7.0	4.1	23.3	81
1975	6.9	4.4	24.8	80
1976	7.0	4.8	26.5	82
1977	6.9	5.1	28.2	82
1978	6.9	5.5	30.5	82
1979	6.9	5.9	32.6	82
1980	7.1	6.5	35.2	84
1981	7.5	7.2	36.1	90
1982	7.8	7.9	37.0	97
1983	8.1	8.5	38.1	101
1984	8.2	9.6	40.1	109
1985	8.1	10.7	42.4	115
1986	8.0	11.5	44.8	117
1987	8.0	11.8	47.3	113
1988	7.9	12.6	50.2	114
1989	7.9	14.0	53.2	119
1990	8.0	15.5	56.0	126
1991	8.1	17.0	58.2	133
1992	8.4	18.3	61.2	136

* Indexed (1970 = 100)
Source: Motor Vehicle Manufacturers Association: *Facts & Figures*

These figures show that the average age of trucks in use was climbing steadily through the early 80's, whereas it had been dropping through the 70's, and has resumed its climb currently. The same must be said, even more emphatically, about the trucks 12 years old and older. Measured another way, the proportion of the nation's fleet of trucks 12 years old or older which was dropping through the 70's has been climbing since the watershed of 1980 — the 1992 ratio was *170%* higher than the trough in 1975!

APPENDIX D

CALIFORNIA DEFINITION

CHAPTER 2.7. INTEGRATED INTERMODAL SMALL PACKAGE CARRIERS

Article 1. General Provision and Definitions

41.20. For purposes of this chapter, "integrated intermodal small package carrier" means any person or corporation that transports by motor vehicle packages or articles weighing not more than 150 pounds and that provides, by itself or through a company affiliated through common ownership, intermodal air-ground transportation service for the packages or articles in both interstate and intrastate commerce. The incidental or occasional use of aircraft in transporting packages or articles does not constitute integrated intermodal operation within the meaning of this section.

ATTACHMENT 1

BEFORE

THE

UNITED STATES HOUSE OF REPRESENTATIVES

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

SURFACE TRANSPORTATION SUBCOMMITTEE

HEARINGS ON

PREEMPTION OF INTRASTATE MOTOR CARRIER REGULATION

STATEMENT OF

JOHN V. LUCKADOO

VICE PRESIDENT TRAFFIC

FREDRICKSON MOTOR EXPRESS

3400 NORTH GRAHAM STREET

P.O. BOX 5369 (28225)

CHARLOTTE, NORTH CAROLINA 28206

704/376-2471

My name is John V. Luckadoo, Vice President Traffic of Fredrickson Motor Express, Charlotte, North Carolina. Fredrickson is vehemently opposed to Section 211 of Senate Bill S. 1491.

Fredrickson is a motor carrier of general commodities handling primarily less than truckload shipments. Fredrickson is a carrier of long standing that has operated continuously since 1919 providing same and next day service for seventy-five years. It is still owned by the Fredrickson family making it one of the oldest family owned carriers in existence today.

In this service area, we maintain and staff 31 full service terminals. We own and operate 575 tractors, 1545 trailers, and 80 straight trucks. This represents an investment of more than $20,000,000. For seventy-five years Fredrickson has attempted to tailor its service to meet the needs of it's customers. Next day service is a necessity in our service area. Individual shipper needs require same day service in many instances, necessitating pickup and delivery at all hours of the day and night. Fredrickson maintains an on-time record of 99.7 percent, one of the best in the industry.

For the year 1993, our gross operating revenues were $52,669,051. Forty-two percent of this was derived from handling intrastate shipments. Needless to say, intrastate commerce is a vital part of our business, it is also a major contributor to our ability to

meet the needs of our thousands of customers.

Fredrickson provides employment to more than 1,300 employees. This represents approximately 4,500 family members who depend on us for their livelihood. Their well being as well as that of Fredrickson will be jeopardized if Section 211 becomes law.

Fredrickson is the largest as well as the oldest intrastate carrier in the State of North Carolina. We hold Certificate No. 1 from the North Carolina Utilities Commission. In the year 1993, our North Carolina revenues were $23,315,029. I believe this will rank us near the top of the nation for single state intrastate revenues. Since North Carolina revenues play such a large role in our operations, I will discuss in length the present regulations and their benefits to the shippers and carriers.

Intrastate Regulation of motor carrier service within the state of North Carolina has had a beneficial effect on both carriers and shippers alike, benefitting the people of the State of North Carolina as a whole. It became obvious that the current scheme of interstate regulation was adversely affecting intrastate commerce. The number of available intrastate motor carriers was declining while the remaining carriers were fighting for financial stability. This was recognized by the North Carolina Traffic League, an organization of both large and small shippers in North Carolina, which saw the steady depletion of available

motor carrier service and decided it had to end. Shippers recognize that motor carrier service is vital to the flow of their products in commerce. Working with the carrier members of the North Carolina Intrastate Rate Committee which, through the State's regulatory scheme, provides antitrust immunity for a forum for the free flow of ideas between shippers and carriers, a plan was proposed to the North Carolina Utilities Commission, which acted as the public advocate. The plan would insure that the carriers would have reasonable, yet sufficient revenues to operate, while the shippers could depend upon continuous, efficient service at reasonable prices.

This process could only have happened under the State's regulatory scheme which provided a forum for shipper-carrier interaction while protecting the public interest. Shippers and carriers were able to work out mutual problems to the satisfaction of all parties. In this case, the people of North Carolina were the real winners as goods freely flow in commerce through a network of financially stable, efficient carriers. Pricing is reasonable and nondiscriminatory. This could only happen through the regulatory process.

Without regulation, the system now in place in North Carolina could not continue and would, in fact, collapse, bringing to realization the worst fears of the North Carolina Traffic League. Rates will no longer be cost-related. Rather than attempting to establish a level playing field for shippers by prohibiting rate

discrimination, federal preemption, if implemented, will serve as a signal that all is fair in negotiating rates. The level of individual shipper-carrier rates will reflect the economic power of the individual participants. The North Carolina LTL carriers will be reduced in number, and those remaining will be constantly struggling for financial stability.

Who really benefits from these price wars? The loudest voices demanding federal preemption or deregulation - the big shippers and the big carriers. The big manufacturers, suppliers, and retailers will dictate the rates knowing that regardless of the number of trucking bankruptcies, there will always be another carrier willing to accept the shipper's freight - albeit on the shipper's terms. The small, out-of-the-way shipper will pay the price, and communities will lose service. The big carriers will take only the best freight, leaving the small shipper with no service option at reasonable rates.

Regarding the issue of whether some communities will lose service in a deregulated environment, one need only look at the Bus Regulatory Reform Act of 1982. The proponents of that Act ignored the warning of the potential loss of bus service to rural America and insisted that enough safeguards were built into the bill so that few rural communities would be affected. However, once the ICC, through its preemption powers, was allowed to supplant the authority of the State Public Utility Commissions, it was another story.

Even with those so-called safeguards, the State of North Carolina saw the number of communities with intercity bus service decline from over 600 in 1982 to fewer than 125 in 1986. This equates to an approximate 80 percent decline in communities with intercity bus service in the first four years after passage of the Act. Moreover, the two major bus carriers that existed prior to the Act - Trailways and Greyhound - have merged to form an effective monopoly that was forced into bankruptcy. The public interest is not served by these happenings.

Who will be the losers in a deregulated environment if federal preemption becomes a reality: The small and rural shippers who either cannot find reliable motor carrier service or when they do, end up paying the carrier' losses resulting from discounts given to the big shippers. The carriers who will find themselves in price wars for the limited amount of freight. The American public which once again must bear the cost of unemployment, bankruptcies, debt, and deteriorated safety.

With respect to highway safety, it offends common sense to claim that the extreme competitive pressures already brought about by interstate deregulation have not led to cutting corners in the areas of safety and maintenance, which in turn shows up in higher accident rates. The facts as reported in a January, 1991, report of the General Accounting Office noted that the Federal Highway Administration work load date show that the number of carriers entering the marketplace in any one month can exceed the number

that underwent safety reviews. For those carriers that the highway agency did inspect, the GAO indicated that 70 percent received a less-than-satisfactory rating. To avoid further deterioration, Congress will need to consider additional funding and manpower for that purpose.

To contend that the federal preemption of State economic regulation of motor carriers is a positive action is inappropriate as an all-encompassing general statement. The State of North Carolina is in the best position to determine what is best for the people of North Carolina - not the federal government. It is just plain wrong to contend that what is right for one State is necessarily right for another. We know that it's not true for North Carolina.

As I understand the provisions of Section 211 as approved by the Senate, only carriers meeting certain criteria would be exempt from state regulations. For instance, a motor carrier that is affiliated with an air carrier through common ownership would be exempt. On the other hand, family owned carriers such as Fredrickson, whose only source of revenue is through their motor carrier operations, would continue to be regulated. How unlevel can a playing field be? This would be a big windfall for the large conglomerates that also operate motor carriers that aggressively solicit and handle intrastate traffic. In North Carolina alone there are two such carriers that in 1993 had revenues in excess of $12, 683,300 from handling intrastate

traffic. With the help and financial assistance of their parent companies, I shudder to thing what is inevitable if Section 211 becomes law.

There is thought in Congress that to level the playing field, all state economic regulation of trucking should be deregulated or preempted by the federal government. It is felt that this would place all carriers on equal terms. Nothing could be further from the truth. A company like Fredrickson could not compete with the pricing practices of the large national carriers with deep pockets. Anyone who thinks that predatory pricing couldn't or doesn't exist in the motor carrier industry hasn't had any working experience in the industry. There are already a number of well run, well managed trucking companies that have been forced out of business by forces outside their control. Total deregulation of intrastate motor carrier transportation would only magnify the problem. Old time family owned companies like Fredrickson would become an endangered species. That is a plain fact of life.

We have no objections to the Airport and Airway Improvement provisions of this bill, but since the Senate chose not to hold hearings on the Section 211 provisions, we urge the House to move slowly and cautiously on this. For instance, has it been ascertained what portion of the Nation's intrastate commerce is AIR FREIGHT? My estimate, based on more than forty years in the motor carrier industry, is that it would be less than one

percent. This is taking into consideration the fact that a tremendous portion of so called AIR FREIGHT moves over the road via truck from point of origin to the consignee's door. The freight never sees an airplane. Yet, for a select few, the other ninety-nine percent would be disrupted. If Congress must pass something, restrict it to shipments weighing 150 pounds or less and then only when moving all or part way via air.

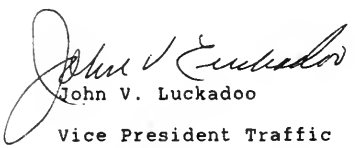
The intrastate market place is far different from the interstate marketplace. The demands for service are greater, the shipments are usually smaller and the piece count per shipment higher. This result is higher unit cost unless there is sufficient traffic over each lane to cover the carrier's expense. With the influx of new carriers and the expansion of the existing carriers that would be exempt, I see nothing but chaos in the market place. The little shipper stands a chance of being forgotten in both service and pricing. There will be excess capacity resulting in higher operating cost for the carriers competing for the same traffic. Whatever legislation is enacted into law, if any, will not generate one single pound of additional freight for the industry. It will only further dilute the existing traffic.

Fredrickson, for reasons stated herein, is opposed to federal preemption of state regulations and Congress should not pass Section 211 unless it is amended as previously outlined above. Federal preemption is improper and totally unnecessary. The individual states are in the best position to determine the

transportation needs of the intrastate shipping and receiving public. As we have shown, North Carolina has made changes for both shippers and carriers. Other states have made or are considering changes.

The enactment of Section 211, in my opinion, will result in the loss of many good paying jobs at Fredrickson, as well as the loss of health care and other benefits. The number of employees that we are able to sustain, their rate of pay, health care, and other benefits are contingent upon the volume of business available. I see nothing but a decrease in business and higher operating cost for our company. The public interest is not served by such an occurrence.

Respectfully submitted,



John V. Luckadoo

Vice President Traffic

JVL:pag

STATEMENT OF TIMOTHY J. MAY
GENERAL COUNSEL
THE PARCEL SHIPPERS ASSOCIATION
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE OF THE
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 20, 1994

My name is Timothy J. May; I am General Counsel of The Parcel Shippers Association, a group of approximately 200 businesses which sell merchandise by direct mail and deliver that merchandise to their customers by common carrier or by the Postal Service.

The concern of our Association is the inclusion of Section 211 in the Senate version of the Federal Aviation Administration Authorization Act of 1994 (the "Bill"). Section 211 preempts state regulation of the intra-state trucking operations of what the Bill calls "inter modal all-cargo air carriers" and their affiliates. That Section further defines that term in such a way that only United Parcel Service (UPS) and Federal Express Company meet that definition and therefore would be exempt from state regulation of their intra-state traffic.

The members of our Association are largely dependent upon UPS for the shipment of their merchandise to their customers. Except for the United States Postal Service's parcel post service, our members find that there is, as a practical matter, no competition to United Parcel Service for their business. (Our members also make some use of Federal Express for expedited or express shipments, but find that, at least, there are a variety of competitors to Federal Express for that service.) In the most recent survey conducted among our members, less than 1% of the volume of their shipments were carried by a carrier other than United Parcel Service or the U.S. Postal Service.

So far as our members are concerned UPS has a monopoly over their business. It has always been our belief that it was a serious mistake to deregulate UPS in the Motor Carrier Act of 1980. The premise of that Act was that the protection afforded to consumers by the Interstate Commerce Commission (ICC) would be more than adequately supplied by competition in the marketplace if the heavy hand of regulation were removed. It is clear the Congress was unaware that, as a practical matter, there simply was no competition to UPS, and, despite the free entry opportunities for competitors since 1980, there remains no competition to UPS for our business, except the parcel post service of the United States Postal Service.

UPS had 1993 revenues of almost $18 billion, carried almost 3 billion parcels, and employs 285,000 people. This monster transportation company, the largest in the world, is, for most of that revenue and for most of those billions of parcels, free of regulation by any regulatory authority in the United States, and for much of that traffic has no competition. The only remaining regulatory power over UPS is that asserted by state public utility commissions against the minuscule portion of their traffic that is intra-state.

While the ICC maintains some nominal regulatory authority over UPS, it is significant to note that not once since the enactment of the Motor Carrier Act in 1980 has the ICC investigated any single tariff filed by UPS. This is so, even though UPS has filed for rate increases year after year far in excess of the rate of inflation, and in some cases as much as 40% to 50%.

It is perfectly clear that Section 211 has no place in a reauthorization of the Federal Aviation Administration. This Section was added to the Bill only after it was voted out of Committee. This was simply an attempt by UPS to avoid the burden of proof and the exposure

of this as special legislation favoring one company that public hearings would inevitably bring out.

While regrettably the state public utility commissions have no authority to examine into the inter-state movements of UPS traffic, there is some measure of protection against the monopoly power of UPS by reason of the fact that that portion of their huge volume of business performed on a purely intra-state basis is subject to some level of scrutiny and review. These state regulatory proceedings are the only available opportunity for UPS customers to air grievances and find some impartial body to require accountability from this largest transportation company in the world.

Section 211 will provide no relief for the small carriers who are operating intra-state who will continue to be burdened by state regulation and who, unlike UPS, are regulated as well by the fierce competition for the kind of business they handle on an intra-state basis.

It is ludicrous for UPS to suggest that the minimal amount of state regulation presently asserted against their purely intra-state activities constitutes any meaningful burden on inter-state commerce. The state regulatory activities are, if anything, a minor irritant to this transportation Goliath.

Our Association completely endorses the testimony of John Medved, the CEO of Current Inc., a long-time member of our Association. Mr. Medved speaks for all of our members and I urge that you listen carefully to his testimony about how important to his company it is that there is some regulatory authority somewhere that can call UPS to account and require them to demonstrate that their rate increases are fair, reasonable, and nondiscriminatory.

On behalf of our hundreds of members who are completely at the mercy of UPS, we urge you not to compound the mistake made in the Motor Carrier Act of 1980 by removing the last remnant of a public authority to which the world's largest unregulated monopoly must answer.

#69102

STATEMENT OF JON J. MEDVED

PRESIDENT AND CHIEF EXECUTIVE OFFICER OF CURRENT, INC.
BEFORE
THE SURFACE TRANSPORTATION SUBCOMMITTEE OF
THE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
WEDNESDAY, JULY 20, 1994

My name is Jon J. Medved. I am President and Chief Executive Officer of Current, Inc. ("Current"). Current is a direct marketing company located in Colorado Springs employing approximately 2,500 individuals. Annually, Current ships in excess of 19,000,000 parcels to its customers throughout the US. Consequently, Current is vitally interested in any Federal legislation with the potential of upsetting the marketplace for parcel delivery services, in which marketplace Current routinely shops. Section 211 of the Senate version of the Federal Aviation Administration Authorization Act of 1994 (the "Bill") has such potential, and for this reason I am pleased on behalf of Current to have this opportunity to present my views on why your Subcommittee should prevent the inclusion of Section 211 in the final version of the Bill.

1. **The Anti-Competitive Effect of Section 211**. Section 211 of the Senate version of the Bill would preempt state regulation of the intra-state trucking operations of certain "inter modal all-cargo air carriers" and their affiliates. Section 211 defines "inter modal all-cargo air carriers" in such a way that for all intents and purposes United Parcel Services Inc. ("UPS") and Federal Express Co. are the only carriers who would qualify for the exemption from state regulation. The question arises whether an exemption pushed by this elite class of two is the proper subject of Federal legislation. If enacted, Section 211 would place the much smaller competitors of these two giants at a tremendous disadvantage because the intra-state trucking operations of these smaller competitors would continue to be subject to state regulation. UPS already controls 80% of the small

parcel delivery market nationally. If competition is to be fostered, a level playing field must be maintained.

2. **State Regulation Provides an Important Check Against the Sheer Market Power of UPS**. In Colorado, UPS holds a "certificate of convenience and necessity" issued by the Public Utilities Commission ("PUC") which has enabled UPS to build a formidable intra-state parcel delivery business under a system of "managed competition." In addition to the rights, including the right to be free from destructive or excessive competition, which UPS enjoys as the holder of its certificate, Colorado imposes on it certain obligations intended to protect the public interest. One of these obligations is that UPS establish rates that are "just and reasonable" and that do not unreasonably discriminate between classes of service. Colorado, like many other States, has implemented a regulatory process which requires common carriers such as UPS to notify the public of proposed new tariffs for intra-state services and which provides interested parties the opportunity to protest the proposed rates on the basis of the "just and reasonable" standard.

Earlier this year, for the first time ever, Current elected to exercise its right as a Colorado rate payer to protest the latest rate increases proposed by UPS for intra-state ground shipments. Current was concerned by the fact that the rates it was required to pay for the delivery of its typical parcel to Colorado residential customers had increased more than 80% over a four year time period from 1989 to 1993. Over the same time period UPS had increased it rates payable for commercial delivery in Colorado of the same size parcel by only 49%. When UPS proposed new increases in its rates for 1994, Current asked that the Colorado PUC suspend the implementation of the new rates and schedule a hearing to consider the reasonableness of the proposed increases and whether or not any cross-subsidization was occurring between the residential and commercial delivery segments of UPS's business.

Based upon the findings developed at the hearing, the Colorado PUC recently ruled that UPS has not met its burden of proving that the proposed new rates are just and reasonable. In its ruling, the PUC expressed its concern that the cost allocation methods used by UPS do not justify the differences it charges for residential versus commercial delivery services. The matter has been remanded to an administrative law judge for a further hearing. Enclosed with this testimony, is a copy of the Colorado PUC's decision.

It has come to my attention that UPS may be citing the recent action of the Colorado PUC as a reason to enact Section 211. Current would argue just the opposite. The recent action taken by the Colorado PUC is precisely why Section 211 should not become law. The regulatory process in Colorado is fair and appropriate. It provides public utilities such as UPS every traditional element of due process and an ample opportunity to protect its rights and prove the justness of its rates. If UPS cannot prove that the rates it proposes to charge Colorado consumers for purely intra-state Colorado services are just and reasonable, it should not be heard to complain to the Federal Government that it is somehow unfairly burdened.

The argument that UPS should be entitled to impose uniform rates within the various states should be given little weight. As the chief executive of a multi-state business, I can attest to the fact that the ideal of uniformity in the US is often sacrificed in the interest of state sovereignty. With respect to taxation, for instance, businesses engaged in inter-state activities are routinely required to comply with a multitude of varying tax rates and rules that make the costs of doing business different and unique in each State. Furthermore, UPS has recently pursued a policy of entering into private customized agreements with some of its largest customers. By definition, the rates charged these preferred customers are not uniform with the rates paid by the general public.

3. **Section 211 Encroaches State Sovereignty**. Section 211 would preempt a State from exercising regulatory authority over the purely intra-state trucking operations

of the elite class of "inter modal carriers." The power to regulate intra-state transportation systems has historically been exercised by the States. In the words of James Madison: "The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." *The Federalist Papers No. 45.* Promoting an efficient intra-state ground transportation system is such an object.

If the public is denied a state forum to advance legitimate issues regarding critical local transportation issues how will these issues be resolved? Since the Motor Carrier Act of 1980 stripped the ICC of authority to regulate these matters, the public will be left to fend for itself in a market place dominated by companies wielding monopoly power such as UPS.

In conclusion, I respectfully submit that because of its anti-competitive implications and the serious questions it raises with respect to the sovereignty of the States, I urge you to remove Section 211 from the final version of the Bill.

(Decision No. C94-942)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

INCREASED RATES AND CHARGES FOR THE TRANSPORTATION OF GENERAL COMMODITIES BETWEEN ALL POINTS IN THE STATE OF COLORADO FILED BY UNITED PARCEL SERVICE, INC., IN SUPPLEMENT NO. 10 TO INDIVIDUAL PARCEL TARIFF NO. 201-E, COLORADO PUC NO. 9, SCHEDULED TO BECOME EFFECTIVE FEBRUARY 7, 1994.	)	DOCKET NO. 94S-060CY

COMMISSION ORDER ON EXCEPTIONS

Mailed Date: July 15, 1994
Adopted Date: July 13, 1994

BY THE COMMISSION:

This matter comes before the Colorado Public Utilities Commission ("Commission") on exceptions filed by Current, Inc. ("Current"), to Recommended Decision No. R94-560. For the reasons set forth below, we will remand the docket to the administrative law judge for further proceedings consistent with this Decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. UPS has not justified its dual rate structure.

On January 4, 1994, United Parcel Service ("UPS") filed with this Commission Supplement No. 10 to Individual Parcel Tariff No. 201-E, Colorado PUC No. 9, proposing to increase rates and charges for the transportation of general commodities between points within the State of Colorado. The proposed tariff contains, among other

rates, a rate differential between commercial and residential customers. UPS argues that costs for residential service are higher than for business customers because, on average, the number of packages picked up at a residence is lower than for businesses.[1] UPS argues that because most of its packages are small (i.e., 80 percent are 20 pounds or less), the number of packages is the most--and only--important factor for allocating cost of service.

Current intervened and contests the rate differential proposed by UPS. Current asserts that the rate differential is discriminatory, arbitrary, and capricious because it does not fairly reflect the cost of these services.[2] The shipper asserts, and we agree, that in general, differences in rates should be supported by differences in costs of services. *Mountain States Legal Foundation v. Public Utilities Commission*, 590 P.2d 495 (Colo. 1979). To support its claim, Current asserts, and UPS concedes, that the rate differential is not based on any actual tracking of costs. Moreover, UPS also concedes that commercial and residential packages are picked up, processed, and delivered in the

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[1] UPS Exhibit 6, page 4-A. This rate differential was previously approved in an uncontested application filed last year. The Commission approved that application after receiving data from UPS to substantiate those costs. However, this is the first time UPS's data has been subjected to the rigors of trial examination.

[2] We agree with the administrative law judge that the issue before us is whether the rates are just and reasonable. *See* Recommended Decision No. R94-560, at 8, ¶3. However, to the extent the administrative law judge concludes that the question of whether it is appropriate to have a dual rate structure is not at issue here, we disagree. The Commission has the authority to modify the amount of the rate differential in the dual rate structure that has been approved since 1991 if the record in the case contains competent and persuasive evidence.

same way. Despite these similarities, UPS proposes that the rate for residential deliveries be higher than for businesses primarily because of the difference in delivery time for each stop.[3] Current argues that UPS's per-package allocation methodology ignores relevant factors that can be used to allocate costs more fairly.

For example, Current argues that the weight of packages is a relevant consideration for allocating costs between businesses and residential customers. The record establishes that business packages are, on average, heavier (average weight 11 pounds) than residential packages (average weight 6 pounds). Heavier business packages may be more costly to deliver than residential packages.[4] If this is true, allocating costs only on a per-package basis may not capture the true cost of service. Current also raises issues of efficiencies of the residential class that were not adequately addressed by UPS. Nor were we persuaded that UPS's sample sizes were statistically valid. These samples were offered to the Commission as important justification of its allocations. Yet, UPS had not bothered to determine whether the size was statistically valid. This is unacceptable and is part of the reason that we find that UPS has failed to carry its burden of persuasion.

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[3] The data used to support this assertion was national average data.

[4] UPS witness Patrick Edmonds testified that the heavier a package is, the larger it tends to be. Given that larger packages utilize more of the delivery truck space, it is reasonable to conclude that heavier packages cost more and may require the driver to use a hand truck in the delivery, thereby using more time. This analysis was reiterated by Staff witness Gary Gamby who testified that the heavier the package is the more likely it is to cost more to deliver. However, because of the lack of information from UPS, Mr. Gamby could not confirm that this analysis was borne out in practice.

Moreover, UPS expert Patrick Edmonds testified that UPS has studies which have tracked cost. UPS has performed studies which, for example, measure the time it takes to perform various accessorial services. These studies include an analysis of "cash on delivery" ("C.O.D.") services provided to residences and businesses. UPS also has performed studies that relate the size of the package to its weight and used these studies to develop cost allocations. (Tr. 55, lines 12-19.) None of these studies, however, were produced at the hearing, and there was no explanation why they were not relied upon in setting rates.

UPS has the burden of persuasion in this proceeding. *See* Rule 82 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. The Commission, based on issues raised by Current but not adequately addressed by UPS, questions the justness and reasonableness of the rate structure imposed by UPS on the residential class. We are not persuaded that the rate differential based on a single factor is fair, just, or reasonable. This is particularly troubling in light of the fact that UPS has apparently conducted—but not used—cost studies that address some of the factors raised by Current. UPS does not explain why the studies were not used. We are left with only one factor, the number of packages, against which to allocate costs. While this ultimately may be the only appropriate allocator of costs, we are unable to reach that conclusion based on the evidence in this record. Current does not dispute that the labor costs included in the proposed business rate increase are reasonable.

Typically, when a utility fails to meet its burden of persuasion regarding its rate structure, the Commission permanently suspends the tariffs. However, in this case, that remedy is not appropriate. We cannot determine the amount of the increase and spread it proportionately over all rates. Existing rates have a similar general rate differential that Current objects to here. Spreading the increase proportionately over existing rates simply perpetuates a rate structure that we have found has not been justified at this time.

Finally, we do not believe that the record is sufficient for eliminating the rate differential. While such a rate design may be beneficial to residential ratepayers, it may be unjust and unreasonable to business customers. Therefore, we will remand the case to the administrative law judge to conduct a hearing to allow the parties to elaborate on their positions.

We are aware of the fact that UPS is a company operating worldwide, and that its rate structure and prices have already been approved in 48 states. We do not know whether the regulating authorities in those 48 states were faced with a contested proceeding as we have been. We do not take lightly the discontinuity created by our decision. However, this fact alone does not negate our duty to carefully weigh the evidence before us according to our Rules of Practice and Procedure and to render a decision based on that evidence.

2. UPS's estimate of non-labor costs is not supported by the record.

Current also takes issue with the use of labor costs as a proxy for non-labor expenses in setting the revenue requirement. The record is devoid of any justification for using labor costs to estimate non-labor expences. When asked why this method was used, UPS witness Patrick Edmonds responded that there is no harm in such an approach because he believed non-labor indices show non-labor costs have increased more than labor costs. There is no documentation that establishes this assertion. Moreover, Current expert witness James Cvelich testified that the year-to-year compounding growth rate for residential rates is not justified when compared to the Producer Price Index.

In addition, the Commission is concerned that the increase in labor rates fails to account for productivity offsets that may have occurred. See *Mountain States Telephone & Telegraph Co. v. Public Utilities Commission*, 687 P.2d 416 (Colo. 1984); *Mountain States Telephone & Telegraph Co. v. Public Utilities Commission*, 576 P.2d 544 (Colo. 1978); and *Mountain States Telephone & Telegraph Co. v. Public Utilities Commission*, 513 P.2d 721 (Colo. 1973). Therefore, we find that UPS has failed to carry its burden to persuade us that the non-labor costs have increased.

As with the rate differential issue, we will remand this issue to the administrative law judge to allow the parties to develop the record further on this issue.

3. UPS's allocation of accessorial revenues is not justified by the record.

The last issue raised by Current concerns UPS's accessorial charges. These are miscellaneous charges for such things as C.O.D. delivery, delivery confirmation, and address correction. UPS proposes to allocate the revenues generated from these services on a per package basis. That is, UPS calculates the total intrastate accessorial revenues and divides this by the number of intrastate packages. This per package figure is then multiplied by the number of business and residential packages to estimate the revenue generated for both of these classes of service. UPS does not track the generation of revenues to either of the two classes of service. It could be, for example, that the majority of C.O.D. revenues are generated by the residential class.[5] Thus, there is no basis in this record to determine whether UPS' allocation of revenues between classes is a fair proxy for how revenues are actually generated. Nor are we satisfied that this per package allocation leads to a fair allocation between intrastate and interstate revenues. It may, but the record fails to justify this allocation.

Current argues that residential package delivery actually generates a higher proportion of accessorial revenue. Therefore, any proper allocation of revenues to justify a rate differential between two classes of service must be on the basis of the real sources of those revenues. In other words, to determine the net

[5] Mr. Edmonds offers that the accessorial charges are used by both business and residential classes. However, we find that this observation is anecdotal. This testimony is not precise, and cannot be relied upon to set rates which are just and reasonable.

revenue required to be derived from the residential rates, the total actual costs of that service must be reduced by the actual accessorial revenues from residential service. We, therefore, conclude that, contrary to witness Patrick Edmonds' assertion, there is a valid purpose for allocating accessorial revenues by class of service.

Again, we will remand this issue to the administrative law judge to allow the parties to develop the record further on this issue. If, in fact, higher accessorial revenues are generated by the residential rate class, this higher contribution to revenue requirement should be offset against the allegedly higher costs. If the revenues generated by accessorial services are higher for business customers or, as assumed by UPS, are equal, UPS's calculation may be correct. However, the evidence offered by UPS did not support its conclusion or address Current's rebuttal. We are left with an inadequate body of evidence upon which to base our decision.

Again, as we have done for the rate differential issue, this issue will be remanded to the administrative law judge for the parties to further develop their positions in light of our discussion here. Further proceedings and consideration on remand will be conducted before an administrative law judge of the Commission on August 11, 1994 at 9 a.m. in a Commission Hearing Room, 1580 Logan Street, Office Level (OL) 2, Denver, Colorado.

THEREFORE THE COMMISSION ORDERS THAT:

1. The exceptions of Current, Inc., are granted, in part. Recommended Decision No. R94-560 is reversed, in part, and the matter is remanded to the administrative law judge for proceedings consistent with this Decision.

2. Further proceedings and consideration on remand shall be conducted before an administrative law judge of the Commission at:

TIME: 9 a.m.

DATE: August 11, 1994

PLACE: Commission Hearing Room, Office Level (OL) 2
1580 Logan Street
Denver, Colorado

This order is effective upon its Mailed Date.

ADOPTED IN OPEN MEETING July 13, 1994.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

CHRISTINE E. M. ALVAREZ

Commissioners

COMMISSIONER VINCENT MAJKOWSKI
DISSENTING.

COMMISSIONER VINCENT MAJKOWSKI DISSENTING:

I respectfully dissent. I do not concur with my colleagues on this Decision. I support the decision of the administrative law judge and the position of the Staff of this Commission. I am of the opinion that UPS's requests were just and reasonable, and in the public interest. I would not remand but totally affirm the administrative law judge decision.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

(SEAL)

VINCENT MAJKOWSKI

Commissioner

ATTEST: A TRUE COPY

Bruce N. Smith
Director

OREGON TRUCKING ASSOCIATIONS, INC.

Michael A. Meredith
President

5940 N. Basin Ave. • Portland, OR 97217 • (503) 289-6888 • FAX (503) 289-6672

MICHAEL A. MEREDITH TESTIMONY:

SB 1491 and Federal Preemption of State Trucking Regulations

My name is Michael Meredith and I am president of the Oregon Trucking Associations. I am here today on behalf of my members who have asked me to represent our state's trucking industry which is comprised of 28-thousand carriers, providing good family-wage jobs to nearly 89-thousand Oregonians.

The current threat in Congress to preempt a state's right to regulate intrastate trucking is of grave concern to us for a number of reasons...not the least of which is that we believe states must be able to continue to regulate -- or not regulate -- our industry as best suits their citizens' particular needs.

The current deregulation proposal contained within Senate Bill 1491 will prove disastrous for small businesses and consumers. Let me explain some of the key reasons why...

• **Small towns and smaller shippers will become the victims of price discrimination.**
As a result of interstate deregulation, off-the-beaten path locations and smaller shippers who have little clout with carriers now pay premium prices while larger companies receive heavy discounts -- for the same service! With intrastate deregulation, state regulatory agencies will no longer be able to ensure that all trucking customers receive fair treatment. Small businesses -- which employ almost 90 percent of our state's -- and our nation's -- workforce will be competitively disadvantaged as a result of being forced to subsidize large corporations' shipping discounts.

• **Currently-viable small trucking companies will be plunged into bankruptcy, throwing tens of thousands of Americans out of work.**
Interstate deregulation resulted in widespread trucking company failures. In fact, motor carrier bankruptcies reached an all time high of nearly 1,600 in 1990 alone. The result was thousands of employees losing good, family-wage jobs. Intrastate deregulation inevitably will result in predatory pricing by the largest carriers which will drive thousands of small- and medium-sized companies out of business, forcing tens of thousands of Americans out of work.

• **Shoestring trucking operations will become rampant and states won't be able to ensure that companies are financially stable and safe.**
Deregulation of trucking will destablize the marketplace. Both the shoestring operations intent on undercutting the competition and the existing companies plunged in financial distress due to that undercutting will have fewer dollars to spend on safety and maintenance. Companies in dire financial straits also are more inclined to speed and violate hours-of-service rules in order to stay afloat financially. As a result, the motoring public will face increased danger on the road. In fact, a 1991 GAO study revealed that trucking companies in the weakest financial condition have the highest accidents rates of all trucking operations.

• **Rural areas will no longer receive adequate shipping and delivery of critical goods and services.**

Two-thirds of Oregon's communities rely solely on trucks for delivery of their essential goods. With intrastate deregulation, our small towns that are located outside of the more profitable freight corridors will lose crucial, cost-effective delivery of these goods. The service that would remain to those areas would cost far more, creating a financial hardship for residents -- particularly for those in already hard-hit, economically depressed communities. Current intrastate regulations ensure that Oregon's rural regions receive reliable service at a fair price.

• **States will lose the ability to protect their citizens who rely on the trucking industry for safe, dependable shipping services at a reasonable cost.**

Each state has different needs regarding transportation services and it is only appropriate for state legislators and other officials to have the right to tailor their intrastate regulations based on what they deem to be in their citizen's best interests. In Oregon in recent years, state legislators have debated the issue of economic regulation three times...and all three times, they have reaffirmed their commitment to maintaining regulation of intrastate trucking. They have determined that regulation is in the best interest of all Oregonians.

# # #

In closing, the Oregon Trucking Associations Board of Directors and members urge you to prevent federal preemption of intrastate trucking regulations. Otherwise, the toll on our industry, our economy, our small towns and small businesses, and our highways will be devastating. The price for all of us is simply too high to pay.

Thank you.

Michael A. Meredith, President & CEO
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AAMA
American Automobile Manufacturers Association

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Andrew H. Card, Jr.
President and Chief Executive Officer

July 19, 1994

The Honorable Nick J. Rahall, II
Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
B-376 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman: Nick-

Re: S. 1491, Section 211, State Economic Regulation of Motor Carriers

The American Automobile Manufacturers Association (AAMA) supports the provisions in Section 211 of S. 1491, **Federal Aviation Administration Authorization Act of 1993**, which would preempt state economic regulation of intermodal all-cargo air carriers. Further, AAMA would encourage the Subcommittee on Surface Transportation to endorse the provisions in Section 211, as adopted by the Senate, and expand those provisions to apply to all federal and state economic regulation of the motor carrier industry.

The elimination of all federal and state economic regulation of the motor carrier industry is necessary for U.S. industry to compete effectively in a global market. Regulatory reform is the avenue by which competitiveness, efficiency and productivity in the motor carrier industry can be accomplished. The motor carrier industry became more competitive at the federal or interstate level when the **Motor Carrier Act of 1980** became law.

A 1994 Cato Institute study, **Intrastate Trucking: Stronghold of the Regulators**, concluded the following regarding the removal of economic regulation at the federal and state levels:

> "Removing federal economic controls on trucking brought an estimated savings of from $38 billion to $56 billion a year in shipping, merchandising

and inventory costs. Removing state economic regulation of trucking could save American businesses and consumers an additional $5 billion to $12 billion a year."

Further, the Cato Institute study found the following with regard to motor carrier industry safety and service to small communities after the removal of economic regulation:

"Opponents contend that service to small communities will decline drastically and that cutthroat competition will compromise highway safety. Study after study has proven those charges baseless. Safety standards, not economic regulation, are the appropriate means of ensuring safe trucking. Attempts to do so by economic regulation are both ineffective and expensive."

AAMA urges the Subcommittee on Surface Transportation to endorse the provisions in Section 211 of S. 1491, as adopted by the Senate, and expand those provisions to apply to all federal and state economic regulation of the motor carrier industry.

Sincerely,

Bob Moss

Robert E. Moss
Vice President
Government Affairs Division

US HOUSE OF REPRESENTATIVES

THE SURFACE TRANSPORTATION SUBCOMMITTEE OF THE HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE

STATEMENT OF THE OREGON PUBLIC UTILITY COMMISSION

ON

THE AIRPORT AND AIRWAY IMPROVEMENT ACT (S. 1491)

JULY 20, 1994

COMMISSION CHAIRMAN
JOAN H SMITH

COMMISSIONERS
RON EACHUS
ROGER HAMILTON

550 CAPITOL ST NE
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The Oregon Public Utility Commission expresses its strong opposition to Section 211 of the Senate amendment to the Airport and Airway Improvement Act (S. 1491). If this amendment becomes law, it would destroy much of Oregon's intrastate motor carrier regulatory system and the benefits it provides to the citizens of the state.

The Senate amendment creates unfair competition. Sponsors argue that its purpose is to "level the playing field" between UPS and FedEx. The amendment may put those two carriers on an equal competitive footing along with a few large interstate carriers by virtue of affiliation with intermodal all-cargo air carriers. The end result, however, is that a majority of carriers would remain under regulation and would be unfairly treated. This amendment does not come close to creating an equitable operating environment for all; rather it creates a most unfair transportation system.

The decision to economically regulate intrastate commerce is for the states to make. Each state should be allowed to decide the type of regulation that meets the needs of its residents. States are socially and economically diverse and the federal government should not dictate state policies by preemption.

RATES

Oregon's regulation ensures that trucking companies assess rates that are reasonable and nondiscriminatory. All shippers and receivers are charged fairly for intrastate service. The trucking companies receive fair compensation for their services ensuring that they can continue to invest in plant and equipment. This fosters stable and reliable transportation services that are available to all businesses. Virtually everything that is transported in this country moves by trucks somewhere in the distribution chain. Oregon and other states should be allowed to pursue fair treatment of shippers and receivers and provide stability in transportation services through continuation of our regulatory program. The Senate amendment would clearly not permit this.

SERVICE

Oregon's motor carrier entry policy ensures that all Oregonians receive satisfactory service. This is an essential ingredient for balanced economic development. Regulation is especially critical in Oregon because two-thirds of the state's population

is concentrated in eight metropolitan counties. The remaining population is scattered throughout 28 other counties. Many communities are not served by large interstate carriers, so freight must be interlined with local carriers possessing intrastate authority. So, in effect both interstate and intrastate shipments are hauled to these points only by carriers regulated by the state.

As a result of the state's regulation of routes and service, intrastate carriers provide good service at reasonable rates to geographically remote Oregonians. Federally mandated deregulation would jeopardize the quality of life and economic viability of Oregon's many small communities. Unquestionably, the Senate amendment would force Oregon to abandon this program. It simply would not work to impose regulatory responsibilities on carriers with intrastate authority that serve rural Oregonians while their exempt interstate counterparts selectively capture other profitable business. Under deregulation, sooner or later carriers would be forced to reduce or eliminate present service to unprofitable points.

SAFETY

The Commission believes there is a close connection between economic regulation and safety. Unfettered competition directly results in reduced safety compliance. Under deregulation, marginal carriers frequently disobey safety regulations such as those relating to equipment maintenance and hours of service. Other carriers, to remain competitive, are encouraged to do the same. This scenario is a fact of life in interstate commerce. Oregon wants to prevent similar safety compliance problems for intrastate trucking companies.

Those promoting deregulation often state there is no connection between safety and economic regulation. This defies common sense. A carrier facing bankruptcy will cut expenses where it can. Safety is the first to go for many such carriers. A 1991 study by the U.S. General Accounting Office found evidence that financially healthy motor carriers are safer operators than financially marginal carriers.

If economic regulation is eliminated, it is not an effective option to promote trucking safety by simply increasing safety staff. Oregon alone has almost 28,000 carriers registered to operate in the state. It is far more prudent to promote safety for all these carriers by creating an atmosphere where carriers are financially capable of compliance with safety regulations. In truth, an effective motor carrier safety program depends on both economic and safety regulation.

TAXATION

Motor carriers in Oregon pay a weight-mile tax for using Oregon's roads. This taxation is the most fair to the public because it ensures that everyone pays according to the level of use and damage caused to the roads. Carriers generally report their miles operated and resulting tax on a monthly basis. The Oregon PUC audits carriers for compliance every two years. By forcing PUC to deregulate motor carrier transportation, the Senate amendment will create a competitive atmosphere that will result in some carriers underpaying taxes and thereby avoiding their fair share of the costs to maintain Oregon's roads.

SUMMARY

In Oregon, we have promoted a stable competitive environment for regulated carriers so that businesses in all parts of the state receive safe, adequate, economical, and efficient service at reasonable, nondiscriminatory rates. The result has been to promote economic development and at the same time preserve our quality of life. Adoption of Section 211 of the Senate amendment to S. 1491 will destroy this program. We therefore urge the rejection of this amendment by the House of Representatives.

nm/2516NN

Statement of J. Michael Payne
President and Chief Executive Officer
Truck Renting and Leasing Association

Mr. Chairman, the Truck Renting and Leasing Association appreciates this opportunity to submit the views of its membership on proposed intrastate motor carrier deregulation.

TRALA is the national trade association serving the U.S. truck renting and leasing industry. TRALA represents over 600 member companies engaged in full-service truck leasing and short-term commercial and consumer truck rental. Collectively, our members are responsible for almost 40% of all new truck registrations for medium and heavy-duty commercial trucks. 1993 industry revenue was approximately $15 billion, with 100,000 employees.

Because of the importance of the issue of intrastate motor carrier deregulation to both our members and our customers, TRALA has been carefully monitoring the progress of various deregulation proposals considered by Congress. TRALA's customer base is composed primarily of private motor carriers, who must currently contend with a complex and confusing array of state regulatory burdens imposed upon their transportation activities. Therefore, TRALA is deeply concerned over any broad-based federal preemption of intrastate motor carrier regulation that does not extend to private carriers.

TRALA is also concerned that its own members which are engaged in the business of dedicated contract carriage, and those who may wish to provide this service offering in

the future, will be similarly disadvantaged in the marketplace when competing with companies that are deregulated. Dedicated contract carriage is the process by which a truck leasing company or other company providing this service, will assume complete responsibility for the transportation operations of another business, thus freeing that company to concentrate on other areas of their business operations.

TRALA in no way opposes legislative efforts to eliminate burdensome economic regulation of motor carriers, including the Senate's current legislation as encompassed in Section 211 of the Airport Improvement Act, S. 1491. TRALA has long been a proponent of legislation to eliminate overly restrictive regulation of our industry, most prominently, a bill sponsored Congressman Pete Geren (H.R. 1077, the Private Carrier Equity Act) to remove regulatory burdens on private carriage. However, piecemeal deregulation that gives regulatory relief to some, while leaving others to continue to contend with these impediments, would create severe competitive disruptions and inequities among private carriers and others not granted the benefits of deregulation.

As Section 211 is currently written, some TRALA member companies would qualify for deregulation, some companies may have the ability to qualify, and others would not be able to do so.

Inclusion of motor carrier deregulation within an aviation bill arose from the Senate's desire to bring about regulatory relief for the air package express industry. The Senate language was subsequently broadened. If enacted in its present form, the result of Section 211 of the Airport Improvement Act would be complete economic deregulation of those

motor carriers which are able to meet certain qualifying standards, as defined by Section 211. These standards require a company to: (1) hold itself out as an indirect air cargo carrier; (2) affiliate with an air cargo carrier or an air freight forwarder; or (3) utilize 15,000 air-surface shipments annually or affiliate with a company that does so.

Many have argued that private carriers and others could easily qualify by simply positioning themselves as indirect air cargo carriers, as those requirements are defined under 14 CFR § 296.3. However, it is impractical for most private carriers or truck leasing companies to function as "indirect air cargo carriers." More importantly, I'm certain it is obvious to the members of this subcommittee that in most cases, the only rationale for offering such a service would be to qualify for deregulated status. The prospect of creating hundreds, if not thousands, of new air freight forwarding operations solely for this purpose approaches the absurd.

Another important distinction relating to the ability of private carriers to qualify for economic deregulation under the provisions of Section 211 is their general status as "non-transportation companies." The Section 211 provisions are directed to "transportation companies." Most private motor carriers (fully 83%) do not possess operating authority to provide transportation for others. There is considerable question as to whether private carriers without operating authority would be eligible for deregulated status, even if they were to meet the other qualifying requirements.

With the rapid progress and expansion of Section 211 in the Senate, and the continuing trend toward further motor carrier deregulation among the states, the time may

be upon us for federal preemption of intrastate motor carrier regulation. If Section 211 of S. 1491 is to be the vehicle for change, we urge that the scope of its provisions be revised to insure inclusion of private carriage. The language of Congressman Geren's bill, H.R. 1077, would accomplish this by lifting many of the outdated and unnecessary intrastate economic regulations on private carriage, but would not preempt the current state regulation of safety and insurance. Specifically, Congressman Geren's bill would allow private carriers to: (1) haul goods for related companies; (2) use trucks and drivers leased from a single source; (3) lease their own trucks and drivers to others carriers; (4) set up transportation subsidiaries that could operate under the same rules as common and contract carriage; and (5) use vehicles and personnel provided by another carrier to serve exclusively as a company's private fleet.

In short, TRALA seeks the same comprehensive relief for its members and its customers from intrastate economic regulatory burdens as that granted to other carriers currently able to qualify under the Section 211 provisions. We believe there is no justifiable rationale to overlook this very significant portion of the motor carrier industry as this legislation moves forward.

Regulatory relief that discriminates among competitors is a recipe for long-term business disruption in the motor carrier industry. TRALA urges the Congress to adopt legislation that preserves a strong, competitive environment for all motor carriers.

# # #

My name is Weldon R. Sloan. I am Director of Commerce for TNT REDDAWAY TRUCK LINE of Portland, Oregon. I have been actively involved in Oregon intrastate trucking for nearly 50 years. My company is a less-than-truckload carrier which serves four Western States. It has revenues of $100 million annually and a heavy concentration of business within the State of Oregon where we gross approximately $15 million a year. We employ 1,300 people -- of which 550 are domiciled in Oregon. Within the state, our intrastate freight movement is governed by the Oregon Public Utility Commission.

TNT REDDAWAY vigorously opposes the amendment to the Senate version of the Federal Aviation Authorization Act of 1993 as it would have the effect of deregulating intrastate trucking by preempting State regulation. All truck carriers can, or do, provide interline service in connecting with the many air carriers serving Oregon. The entry of new, perhaps undercapitalized or irresponsible operators would destroy the currently stable marketing and distribution system. Through predatory pricing by these carriers, as well as by very large carriers, the economic impact would be disastrous to what is now a well-governed and effective system. There are also very strong concerns about safety issues of unregulated carriers, as well as their financial responsibility for freight claims, c.o.d. payments and the payment of highway taxes.

Oregon -- outside of Portland, which is the major distribution center -- is sparsely populated. Under regulation, carriers are required to maintain equitable rates and consistent daily services within the entire area, including service to hundreds of small communities. Interstate services to these points have been maintained because of intrastate regulation which requires service. However, this fairly priced, consistent service would deteriorate rapidly with the proliferation of new carriers who, like us, would find service to many of these points unprofitable.

Thousands of small shippers and receivers, as well as successful small carriers, would be harmed by deregulation and this is not in the best interest of Oregon

or many other states.

Our present regulatory system in Oregon is working well... please do not destroy it with this federal action. Maintaining State regulation is imperative. We strongly urge your denial of the Senate amendment.

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

SURFACE TRANSPORTATION SUBCOMMITTEE
OF
PUBLIC WORKS AND TRANSPORTATION COMMITTEE

* * *

HEARINGS ON THE SENATE AMENDMENT
PREEMPTING STATE REGULATION OF
SURFACE TRANSPORTATION (S.1491)

FEDERAL AVIATION ADMINISTRATION
AUTHORIZATION ACT OF 1994 (H.R. 2739)

STATEMENT OF MICHAEL SPURLOCK ON BEHALF OF THE OHIO TRANSPORTATION LAWYERS ASSOCIATION AND 255 MOTOR CARRIERS REPRESENTED BY MEMBERS OF THE OHIO TRANSPORTATION LAWYERS ASSOCIATION IN OPPOSITION TO THE SENATE AMENDMENT PREEMPTING STATE REGULATION OF SURFACE TRANSPORTATION (S.1491)

Beery & Spurlock Co., L.P.A.
275 East State Street
Columbus, Ohio 43215
(614) 228-8575

STATEMENT OF MICHAEL SPURLOCK
ON BEHALF OF
THE OHIO TRANSPORTATION LAWYERS ASSOCIATION
AND 255 MOTOR CARRIERS
REPRESENTED BY MEMBERS OF
THE OHIO TRANSPORTATION LAWYERS ASSOCIATION
IN OPPOSITION TO THE SENATE AMENDMENT PREEMPTING
STATE REGULATION OF SURFACE TRANSPORTATION (S.1491)

I. IDENTITY OF PARTIES.

My name is Michael Spurlock and I am a partner in the law firm of Beery & Spurlock Co., L.P.A., 275 East State Street, Columbus, Ohio 43215. The firm has represented motor carriers in excess of twenty years.

As a member of the Ohio Transportation Lawyers Association ("OTLA"), 2733 West Dublin-Granville Road, Columbus, Ohio 43235-4268, I have been authorized to submit this statement on behalf of OTLA and the 255 motor carriers listed on Appendix A ("the 255 carriers") who are represented by members of OTLA on Ohio intrastate commerce matters.

OTLA's membership is comprised of Ohio attorneys who are actively involved in transportation law. Members of the Association are involved in practice before the Public Utilities Commission of Ohio, Interstate Commerce Commission, Department of Transportation, and other agencies.

The 255 carriers are authorized by the Public Utilities Commission of Ohio to transport various commodities between various points in the State of Ohio. The 255 carriers represent general freight and specialized carriers, including, but not limited to, bulk carriers, steel haulers and courier

services. All of these carriers may be properly characterized as small carriers in relation to the relatively few large carriers that are supporting passage of the Senate amendment.

It is respectfully requested that this statement, which has been distributed to the Subcommittee and other interested parties, be incorporated in the record of these proceedings.

II. POSITION OF THE PARTIES.

OTLA and the 255 carriers strongly oppose enactment of §211 of Senate Bill 1491. If enacted, §211 will effectively preempt the states' ability to regulate motor carrier surface transportation (except household goods). Passage of this Amendment would have a devastating effect on the motor carrier industry generally and more specifically on the 255 carriers, their employees and the many communities in Ohio which they serve on a daily basis.

There is no shortage of intrastate motor carrier service in Ohio. Ohio motor carriers compete head-to-head on service and rates and accordingly, Ohio intrastate rates are extremely competitive. This existing competitive balance would be totally upset if §211 is enacted.

Many of the 255 carriers have sent letters to their Congressmen expressing their fear that they will not be able to continue operations if they are subjected to rate wars and predatory pricing of the larger and financially stronger motor carriers. Many other Ohio carriers have only received notice of this proposed legislation from their OTLA counsel within the

last few days and have not had time to communicate their opposition to their Representatives.

III. ARGUMENT.

§211 REPRESENTS EFFECTIVE DEREGULATION OF INTRASTATE TRUCKING AND HAS MANY UNINTENDED SIDE EFFECTS.

§211 has been sponsored by the giants of the motor carrier industry and will benefit only a few at the expense of thousands of small to medium sized motor carriers throughout the nation that provide vital services within each state. Without any regulation of intrastate rates or entry, the largest motor carriers will be able to invade a state, "skim the cream" off the intrastate traffic by selectively cutting rates and thereby drive the existing smaller competitors out of business. §211, if enacted, will have set the stage for this to occur without any effective notice to the existing intrastate carriers.

The language of §211 is extremely broad and states as follows:

> No state or political subdivision thereof, no interstate agency of two or more states, and no other political agency of two or more states shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to rates, routes or services of any intermodal all-cargo air carrier when such carrier is transporting property, pieces, parcels or packages between states or wholly within any single state by aircraft or by motor vehicles, whether or not such property has had, or will have a prior or subsequent air movement. (Emphasis supplied).

When §211 was first proposed, it was allegedly designed to put UPS and Federal Express on a level playing field. However, the language of §211 as passed by the Senate would effectively preempt the states from regulating any aspect of intrastate trucking (except household goods and safety). This is true because the definition of an "intermodal all-cargo air carrier" includes an "indirect cargo air carrier", i.e., an air freight forwarder. An air freight forwarder is not regulated and can be established and qualified with relative ease. A motor carrier qualifies under §211 if it is merely "affiliated" with an air freight forwarder. Thus, virtually any motor carrier may easily qualify as an "intermodal all-cargo air carrier".

Furthermore, §211 does not limit the exemption to documents and small parcels which is normally the type of traffic Federal Express and UPS specialize in handling. In fact, it is not limited in any way to motor carrier transportation that is related to air transportation. In its present form, the exemption would apply to all types of transportation, including the transportation of bulk commodities in dump or tank trucks, truck load shipments of steel and machinery, and similar specialized transportation services.

While deregulation of the trucking industry by a rider attached to an airport appropriations bill is bad enough, the inescapable fact is §211 constitutes terrible legislation. The bill has many unintended side effects. Because the preemption

language is so broad, it prevents the states from enforcing any law "relating to rates, routes or services" of a motor carrier "affiliated" with an air freight forwarder. This may include, but is not limited to, laws relating to taxation, consumer protection, antitrust, tort claims and cargo damage claims. The federal courts have interpreted similar language relative to airlines in 49 U.S.C. App. §1305 and have held that it applies to far more than just regulation of economic matters.

In Morales v. Trans World Air Lines, _____ U.S. _____, 112 S.Ct. 2031, 119 L.Ed2d 157 (1992), the Supreme Court held that state laws prohibiting deceptive advertising were preempted by §1305 and could not be enforced against airlines. Thus, state laws are preempted if they have an effect on the carrier's rates, routes or services.

§1305 has carved out an area in which airlines are exempt from a wide variety of laws, including state common law. For example, federal courts have dismissed state tort claims against airlines, based upon the interpretation of §1305. See Baugh v. Trans World Airlines, Inc., 915 F.2d 693 (1990); and Hodges v. Delta Airlines, Inc., 4 F.3d 350 (5th Cir. 1993). In addition, §1305 has been held to preempt claims against airlines based upon tortious interference with business relations and unfair competition. Continental Airlines v. American Airlines, 824 F.Supp. 689 (S.D. Tex. 1993).

State antitrust laws also would be preempted by the federal legislation. Thus, only the federal antitrust laws

would be available to protect a small carrier from "predatory pricing" by a larger carrier seeking to move into the intrastate market as a result of §211's passage. Recent federal court decisions in the predatory pricing area have established high burdens of proof for plaintiffs in such cases. This combined with the high cost and delay associated with complex antitrust litigation effectively leaves the small carrier without any protection. Thus, the enactment of §211 would effectively render the small carrier defenseless against a large carrier's predatory pricing activities to gain intrastate market share.

Clearly, §211 is ill-conceived, has been largely cloaked in secrecy and is being rushed to judgment with little or no investigation, deliberation or regard for the consequences. OTLA and the 255 carriers respectfully request that the Subcommittee not enact legislation which preempts state regulation of trucking and allow sufficient time for a thorough review of all the issues.

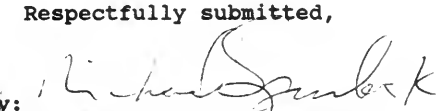
IV. CONCLUSION.

If §211 is enacted in its present form, serious economic, social and legal consequences will flow. The Senate amendment is ill-conceived and should be decoupled from the airport appropriations bill. OTLA and the 255 carriers respectfully request that further consideration of §211 be withheld until such time as all interested parties have had an opportunity to review the legislation and communicate with their

Representatives. The stakes are too high to allow this bad legislation to be rushed to judgment. It is urged that this Committee require §211 to "stand alone" and be scrutinized by the shipper and carrier communities. To do otherwise in view of the many unanswered questions and the apparent lack of consideration for the consequences of the bill, would not be in the public interest.

The intrastate trucking industry should be given an adequate chance to be heard. At this point, many intrastate trucking companies have just learned about the effect of the bill and are only now beginning to communicate their opposition to their elected representatives. Indeed, the fact that this statement is being prepared and submitted at the last minute bears witness to the fact that Congress has given inadequate notice to the intrastate trucking industry and their counsel concerning this very important piece of legislation.

Respectfully submitted,

By: 

Michael Spurlock, Esquire
On behalf of the Ohio Transportation Lawyers Association and 255 Motor Carriers

Beery & Spurlock Co., L.P.A.
275 East State Street
Columbus, OH 43215
(614) 228-8575

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

V. G. Express, Inc.
340 Shoreland Drive
Walton, KY 41094

By: 

Fax#: 606 282 6768

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

PGT Trucking, Inc.
One PGT Way
P.O. Box 400
Monaca, PA 15061-0400

By: Kevin H. Carver

Fax#: 412-728-1852

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

JRB, Inc.
P.O. Box 1386
Ashland, KY 41105-1386

By: John Z Clark

Fax#: 606-329-1150

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Customized Transportation, Inc.
P.O. Box 40083
Jacksonville, FL 32203

By: [signature] Vice President Airport Service

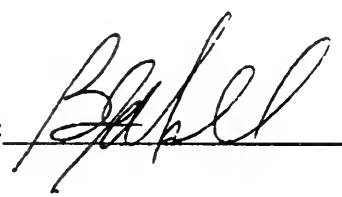
Fax#: (904) 928-1410

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Industrial Transport, Inc.
2330 E. 79th Street
Cleveland, OH 44104

By: 

Fax#: 216 - 881 - 9484

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Leach Trucking Co., Inc.
649 Sunnyside Street
P.O. Box 820
Hartville, OH 44632

By: William H. Leach Jr.

Fax#: 216-877-9613

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Night Hawk, Inc.
P.O. Box 577
Ross, OH 45061

By: William B Dixon Jr.

Fax#: 1-513-860-2489

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Cassandra Watson
P.O. Box 182
Ross, Ohio 45061

By: Cassy Watson DBA Reel Deliver

Fax#: 513 738 2800

July 8, 1994

To the U.S. Senate and House of Repreeentatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Ken's Transport, Inc.
17444 G.A.R. Highway
Montville, OH 44064

By: Robert A Knight Jr.

Fax#: 216-968-3304

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

H.T.I.-Hall Trucking, Inc.
P.O. Box 585
1308 Trenton Avenue
Findlay, OH 45840

By: Tyler Hall

Fax#: 419-425-0980

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Bradco Trucking Service, Inc.
P.O. Box 160
210 Senate Drive
Monroe, OH 45050

By: Daniel Bradburg

Fax#: 513-539-9467

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Ground Air Transfer of
Cleveland, Inc.
4350 Glenbrook Road
Willoughby, Ohio 44094

By: _____
JAMES A. COBB
PRESIDENT

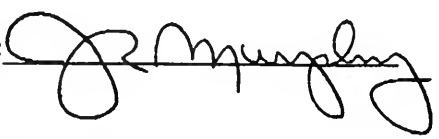
Fax#: 216-951-8076

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Transmobile, Inc.
P.O. Box 621050
Cincinnati, OH 45262

By: 

Fax#: 513-771-3872

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Ohio Auto Delivery, Inc.
3509 Jackson Pike
P.O. Box 268
Grove City, OH 43123

By: David M. Stynchula Pres.
David M. Stynchula President

Fax#: 614-871-6864

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Kuhnle Brothers, Inc.
14900 Crosscreek Industrial Pkwy.
Newbury, OH 44065

By: Bob Russell VP

Fax#: 216-338-1427

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Dart Trucking Company, Inc.
61 Railroad Street
P.O. Box 89
Canfield, OH 44406

By: [signature] CEO

Fax#: 216-533-6690

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

The Aetna Freight Lines, Inc.
P.O. Box 350
2507 Youngstown Road
Warren, OH 44482

By: Charles Freeman, PRESIDENT

Fax#: 216-369-5204

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

T.F.I. Transportation, Inc.
10359 West South Range Road
Salem, OH 44460

By: Samuel Lippiatt

Fax#: 216 337-6873

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Herron Transfer Co.
1026 Franklin Street
Salem, OH 44460

By: Clinton L. Herron Pres.

Fax#: 216-332-2582

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Geauga Courier Services, Inc.
10826 Sherman Road
Chardon, Ohio 44024

By: Paul Kalisky - President

Phone ~~Fax#~~: 216-285-4112

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Taubra Corp., d.b.a.
Mercury Service
2185 Kershner Road
Dayton, Ohio 45414

By: Ralph A Bauer, Pres.

Fax#: 513-278-1061

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

J.P. Transportation Co., Inc.
3800 Tytus Avenue, Box 66
Middletown, OH 45042

By: Donald C. Hamilton

Fax#: (513) 423-8943

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Iddings Trucking, Inc.
State Route 60, Box 388
Lowell, OH 45744

By: George C. Iddings

Fax#: 614 896 2543

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Sullivan Moving & Storage, Inc.
P.O. Box 605
Toledo, OH 43694

By: Michael R Sullivan

Fax#: 419 242-6448

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Priority Dispatch, Inc.
4665 Malsbary Road
Cincinnati, Ohio 45242-5645

By: Richard J. Thomas

Fax#: 513 985-1090

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Retail Delivery Service, Inc.
d.b.a. RDS Delivery Service
1029 W. 7th Street
P.O. Box 14749
Cincinnati, Ohio 45250-0749

By: J. Matthew

Fax#: (513) 721-9955

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

A. J. Welgand, Inc.
P.O. Box 130
Dover, OH 44622

By: John R. Boynton, Pres.

Fax#: 216-878-5504

July 8, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Great Lakes Cartage Company
P.O. Box 4704
Youngstown, OH 44515

By: David C. Spagnola

Fax#: 216-793-6505

July 12, 1994

To the U.S. Senate and House of Representatives:

On behalf of the company named below, I oppose deregulation of intrastate trucking and oppose Section 211 of U.S. Senate Bill No. 1491 which would preempt the states from regulating trucking.

Montgomery Trucking Company
P.O. Box 21
Wellston, OH 45692

By: Phillip Lam

Fax#: 614-384-6796

July 19, 1994

Representative James D. Hayes
House Public Works and Transportation Committee
Room 2165 RHOB
Washington, D.C. 20515

RE: Federal Aviation Administration Authorization Act of 1994 (H.R. 2739) - Senate Amendment Preempting State Regulation of Surface Transportation (S.1491)

Honorable Representative Hayes:

Ace Transportation, Inc. would like to submit comments on the above-referenced bill and specifically address Section 211 of the Senate amendment to the bill.

Ace Transportation, Inc. is a nationwide carrier of general commodities with an emphasis on oil field equipment, supplies and materials; heavy and cumbersome articles and commodities requiring specialized equipment and/or high speed transportation. We possess intrastate operating authority in the states of Louisiana, Texas, Oklahoma, Mississippi, California, Georgia, Kansas, Utah, Kentucky, Ohio and South Carolina. Our total operating revenue for 1993 was $77,065,330.00 and our operating ratio was 99%. We have approximately 1600 employees nationwide with approximately 600 employees in Louisiana. Our intrastate operations account for approximately 75% of our total revenue. The total value of our intrastate certificates and permits is $383,565.00. Ace Transportation, Inc. has reason to be concerned with the effect of Section 211 on our industry. The deregulation of intrastate motor carriage would be detrimental to our industry and seriously damage our ability to provide adequate service to the shipping public. What disturbs us the most on this bill is the apparent attempt to settle a dispute between United Parcel Service and Federal Express through a bill which, on the surface, appears to have nothing to do with preempting the individual states rights to regulate intrastate motor carriage.

Since 1887, the year when the Interstate Commerce Act was passed, this country has prospered with the most efficient freight transportation system the world has ever known. Since the passage of this act (which was specifically designed to curb railroad abuses) most of the states have passed laws governing the conduct of transportation companies within the confines of

P. O. BOX 91714 Lafayette, Louisiana 70509-1714 (318) 837-4567

the individual state. The regulatory bodies created by these laws have maintained efficient and effective transportation industries in their states by controlling rates, entry, insurance and business practices. By monitoring the financial stability of the carriers under their jurisdiction, rates have been maintained at levels that ensure adequate service and reasonable freight rates to the shipping public. Also certificates of authority are granted by the regulatory agencies that require carriers to transport commodities for the public with no allowances or rebates to any shipper. This provides protection to small businesses by providing the same freight rates as larger shippers with the same service levels. Regulations are in place that require motor carriers to provide adequate insurance coverage, through adequately capitalized insurance carriers, to ensure the shipping public protection in the event of an accident. Motor carrier regulation has provided efficient and responsive transportation industries in both interstate and intrastate commerce.

Why would Ace Transportation, Inc. support a regulated transportation industry? Why would any regulated motor carrier support regulated transportation? These two questions can be answered from a historical point of view. The Interstate Commerce Act and the resulting Interstate Commerce Commission were created to control the monopolistic practices of the railroads of the time. In the 1930's, regulation of motor carriers began in both interstate and intrastate commerce to ensure the monopolistic tendencies exhibited previously by the railroads would not happen to the new motor carrier industry. Since that time, motor carriers have become the largest and most ubiquitous form of freight transportation. Through rate regulation and the filing of rate tariffs, carriers had to charge approved rates to all shippers for a particular class of freight and those rates were on file and could be inspected by anyone. This protected both the carrier and the shipper in case of rate disputes. Entry into the transportation market was controlled to balance the service levels of existing carriers with the need for additional carriers. As the states grew and industry expanded, carriers were required to expand or other carriers would be allowed to compete, from a service standpoint, for the existing freight. Since the rates were regulated, carriers could only compete by providing better service than their competitors. "Public convenience and necessity" was required before any new authority was issued. This system has worked, with modifications, for the last fifty years. Without this system in place, the shipping public would be forced to private carriage or shipping their goods on under-capitalized and under-insured motor carriers. Laissez-faire economic theory does not go well with industries in which the initial start up costs are high and the national interest is involved. That is why the banking and power generation industries are regulated. Imagine the chaos if anyone were allowed to open a bank or build a power generation station without regulations. Further imagine the problem the

people would have if power generation and distribution companies were not regulated and could assess any charge they wished. Our predecessors saw the need for regulation of certain industries even though these same people fought vigorously for free enterprise. Thankfully, pragmatism prevailed over idealism when this country started growing. Dealing with the regulatory agencies in all of the states in which we have operating authorities can be cumbersome but the alternative of no regulation and the inherent dangers associated with uncontrolled monopolies is unacceptable and not good for the shipping public.

State regulation of rates and entry seem to be the subject of the deregulation effort. State economies are micro-economic examples of the entire American economy. All the individual states have unique transportation requirements. Factors such as economic base, population, geography and climate determine what types, sizes and number of transportation companies will be required by an individual state. States with an agricultural economy have different needs than a state that has an petroleum-based economy. The state regulatory agencies are responsive to the needs of the shipping public and regulate the rates and practices of the motor carriers in their states. Rate regulation is important to both the carriers and shippers. Rate regulation allows for flexibility and a fair rate of return for the carrier without discrimination for any class of shipper. As discussed earlier, entry into a market is also important function of regulation. There are many reasons why the deregulation of intrastate motor carriers would be harmful to the economy of Louisiana. These reasons could also be applied to any other state in which there is some form of economic regulation. The results of deregulation in Louisiana would be:

1. The State of Louisiana would not be able to collect the 2% Transportation and Communication Tax that is presently being assessed on the revenues on regulated intra-Louisiana revenue. This amounts to a $5,000,000.00 to $6,000,000.00 per year reduction to the state treasury. Also, many states assess charges for trucks registered in that state which is another source of revenue for the states. In an age in which states are increasingly having monetary problems, this lost income looms large.

2. A loss in jobs and reduction of salaries and wages on which income taxes are based. It is inevitable that if deregulation occurs, a "rate war" will erupt the likes of which has never been seen before. Carriers will be forced to compete for a finite amount of freight and the rates will be reduced to attract the freight. Carriers will not be able to afford to cut rates but some revenue is better than no revenue. The winners in such a "rate war" will be the large shippers for they alone will have the economic power to obtain rate concessions and rebates. The losers will be regulated motor carriers, their employees, small shippers and rural shippers. Our industry operates on a 2% to 3% before tax net income based on the existing rate structure.

Ace Transportation, Inc. will be forced to limit service to less profitable areas and make rate adjustments to maintain the amount of freight we presently have. Many jobs will be lost due to the reduction in revenue. The terminated employees will seek unemployment benefits. Salary reductions and wage reductions will also be considered. If implemented, the tax base will be reduced due to decreased earnings. Depending on the extent of the "rate war", Ace Transportation, Inc. could lose 20% of our workforce and salary reductions could be as high as 30%.

3. Deterioration of the rate structure will force existing carriers to cease many unprofitable long-haul routes and will force carriers to become regional where the economies of scale can be realized through short-haul shipments. The service of long-haul transportation will be much slower and much more expensive.

4. Monopolies or large oligopolies will be created. With the deterioration of the rate structure, volume will be increasingly important. The small to medium size motor carriers will be forced out of business or be made to combine with larger carriers. The market dominance of these large carriers will continue to increase. Since Sherman Act cases are rare, monopolistic trends of these large carriers will go unchecked. Eventually, the surviving motor carriers will be able control the transportation industry in a way rarely seen in history.

5. Higher rates will eventually result when the surviving carriers, few in number, exhibit incredible market dominance. Shippers will be forced to pay the higher rates as the supply of trucks dwindles and the demand for motor transportation increases. Shippers will have the option of private carriage to avoid the higher freight charges but the immense cost of equipment, insurance and labor will not make this a viable option. The shippers will be forced to pay the higher freight charges and will in turn pass these increases to the consumers.

6. Truck maintenance will suffer through cost reduction and the decrease in revenues to fund repairs to equipment. Even though the Department of Transportation will keep the same truck maintenance requirements, motor carriers will try to maintain minimum safety levels but the reduction in revenues will make this increasingly difficult.

7. Many motor carriers will look to minimize their insurance costs. Second only to labor, insurance is the highest cost facing motor carriers. Carriers will be forced to seek the least expensive coverages offered. These low cost insurance packages usually include high deductibles which are dangerous, especially to the small to medium size carriers. These carriers will hope that they have no major cargo or liability losses or claims. Shippers will not know there is a problem until they file a claim.

Presently, shippers have the regulatory agencies to assist them in collecting unpaid cargo or liability claims. Without regulation, the shippers will have to seek court action at great cost in an attempt to have their claims satisfied.

8. Ace Transportation, Inc. will have to reduce or eliminate health benefits and employer contributions to the 401-K plan. Reduced revenue and profit would make this almost inevitable.

History has taught us that radical deregulation of an industry has resulted in economic hardship and reduced service levels. When the airline industry was deregulated, fares and service were reduced. Unless you depart from a large city, a airline passenger has to change planes at least once (usually in a city farther from the destination than when they began). Airlines have been compelled to reduce service to remain competitive in the prevailing "rate wars" that is being waged by competing airlines. The fares are low between large metropolitan areas but the fares from Lafayette, Louisiana are as high as they were under regulation and the service has deteriorated. The airlines are a good example of a deregulated industry gone bad but a better example is the motor bus industry. There is only one major bus company left operating and the service is poor. Motor bus service is practically non-existent as is passenger rail service. For a country as great as the United States, we have practically no mass transit system. Deregulation has de-stabilized the passenger system in this country. If we have another oil embargo, I believe you will here a cry for a stable mass transit system from the people.

In closing, Ace Transportation, Inc. does not support any federal preemption of state regulation of motor carriers. If the individual states wish to deregulate the intrastate motor carriers in their state, the states should make that decision based on the best interests of the shipping public. If it is the intent of the United States Congress to deregulate intrastate motor carriage, please do so on legislation that all interested parties may participate in. To deregulate intrastate motor carriage through the Federal Aviation Administration Authorization Act to resolve a dispute between Federal Express and United Parcel Service is not fair to the existing intrastate motor carriers. Deregulation is not a panacea for the nations ills. The motor carrier industry, in general, is in good shape. Let the states decide what is best for the shipping public and the motor carriers in their states.

Thank you for your time and consideration.

Respectfully Submitted,

David Stanley
Vice President - Regulatory Affairs
Ace Transportation, Inc.

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SURFACE TRANSPORTATION SUB COMMITTEE

JULY 20, 1994

STATEMENT OF DURWOOD YOUNG
EXECUTIVE VICE PRESIDENT, PARKER MOTOR FREIGHT, INC.
GRAND RAPIDS, MICHIGAN

My name is Durwood Young. My business address is 1025 Ken-O-Sha Industrial Drive, S.E., Grand Rapids, Michigan 49501. I am the Executive Vice President of Parker Motor Freight, Inc. I have held my present position since starting my employment with Parker nine years ago. As Executive Vice President, I have overall responsibility for overseeing all aspects of Parker's operations, which means I oversee operations, sales and marketing, and finance. I report to Mr. John H. Parker, the company's President.

A lot of miles have been traveled by Parker Motor Freight, Inc. (PMF) trucks since 1927, when Harry's trucking began rather inauspiciously in Boyne City, Michigan. Harry Parker started a trucking firm just before the Depression, with one second-hand truck. The first certificate in PMF's records was issued on August 9, 1927, by the then, Michigan Public Utilities Commission, authorizing service between East Jordan and Petoskey, via Boyne City. The equipment listed was one 1 1/2 ton Ruggles truck.

John Parker is the second generation of the Parker family. He began in his parents' business while still in high school. A third generation of Parkers are now

active in Parker Motor Freight.

PMF has grown from its modest Boyne City beginning into a Midwest operation, including Michigan, the Chicago area, northern Indiana and northern Ohio. Terminal facilities are located at Petoskey, Traverse City, Cadillac, Grand Rapids, Saginaw, Jackson and Warren, Michigan; Chicago, Illinois; Cleveland, Ohio; and South Bend Indiana.

PMF currently employs 210 people and operates a modern fleet of 132 pickup/delivery and highway tractors, 6 straight trucks, 40 service trucks, yard trucks and cars and 375 semi-trailers.

Parker had gross revenue of $17,475,000 in 1993, up from $15,454,000 in 1992. In 1993 the Michigan intrastate revenues of Parker were $9,383,000. Michigan intrastate revenue for 1992 was $8,655,000. Parker's net income in 1993 was $275,000. In 1992 Parker had a net income of $44,000.

I wish to express my strong opposition to the Section 211 amendment to S-1491, because this is nothing more than special interest legislation that is designed to help the big carriers get bigger at the expense of smaller carriers like Parker Motor Freight.

My experience in the industry extends from driver to Executive Vice President. I now sit on the management side of the table, but earlier sat on the labor side. I saw firsthand what happened to trucking companies on the federal level when motor carrier deregulation occurred in 1980. It was a financial disaster. Companies which had been in business for years could not survive rate wars which had no logic or

reason to them. As their revenues decreased, their safety program deteriorated. A driver on the road can increase his productivity in two ways -- by driving faster or driving longer. One of the initial impacts of this proposal will be a rate war to establish market share, creating an unstable rate structure. An unstable rate structure puts that kind of pressure on drivers and carriers. Such should not be the case. Management also has to make choices, when dollars are scarce. It is too easy to take those dollars out of maintenance programs and safety programs. It is too easy to take funds which had been allocated for equipment replacement, and use them to pay the rent or meet the payroll. Having in place a sound rate structure, which provides adequate return to carriers, prevents these kinds of things from taking place.

Michigan has a class rate system for common carriers that is subject to Public Service Commission review. This is the general price level that the LTL common carriers use for both single line and joint line service to all places in Michigan. This rate scale provides rates that vary according to shipment weight, distance and freight classification. This system does not discriminate between large shippers and small shippers, nor between major metropolitan centers and rural areas. Given the same weight, distance and class, the rates are the same for any two shippers. This non-discriminating, publicly filed, reasonable class rate system will be destroyed by complete intrastate deregulation. The few surviving carriers will not be obligated to serve small businesses and rural areas at the same rates that they give to big shippers.

This price and service discrimination will adversely impact Michigan's small

businesses, especially in outlying communities in the lower peninsula and in the entire upper peninsula.

Every geographic region has its own characteristics that have to be given consideration in any transportation debate. Michigan is a two peninsula state connected by a bridge. Any major east-west thoroughfare has to be abandoned to enter Michigan and despite its heavy industrial base, Michigan is not a part of the north-south configuration. The Michigan Legislature has dealt with these issues in their deliberations resulting in modern regional regulations applicable to Michigan operations.

If this Section 211 provision becomes law, I believe that chaos would prevail. It would be an end to rational pricing in Michigan. There would be a very real incentive for the largest, strongest carriers to price at predatory levels the most attractive traffic, siphoning that traffic away from smaller carriers like Parker. The resulting rate wars could very well mean the demise of reliable, responsible carriers such as Parker, which has provided years of commitment to the shipping public in Michigan. I do not believe that the public would benefit nor would the transportation policy be furthered by such a result.

I urge Congress not to pass the Section 211 amendment. The Michigan Motor Carrier Act has been amended several times, most recently in 1993, to meet changing market conditions. There is no need for the Federal Government to change what the Michigan Legislature has overwhelmingly approved for our state.

Intrastate deregulation will cause good companies like Parker to lose a rate war

with the big carriers, resulting in the loss of good paying jobs that have good employee benefits.

If this Section 211 amendment becomes law, I can say without hesitation that small trucking companies will lose customers to the big carriers and in many cases small companies will go out of business. In the 90's, trucking is very competitive in all segments of the industry. I see no reason why a few large carriers should benefit by this special interest legislation while thousands of small trucking companies, their owners, employees and their families suffer the dire consequences.

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